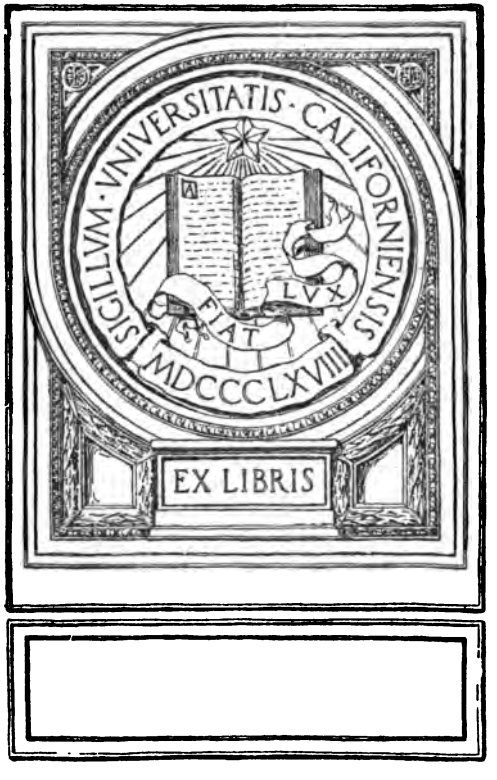
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The Apportionment *of* Loss
AND
Contribution *of* Compound Insurance

A CLEAR EXPLANATION OF THE VARIOUS RULES, WITH EXAMPLES

BY
W. H. DANIELS
ADJUSTER
CHICAGO

THIRD
REVISED EDITION
1913

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DEDICATORY.

My father, Henry J. Daniels, and my mother, during the early years of their married lives, resided on a farm in a sparsely inhabited section of the country, where the land was covered with large trees; and from the products obtained off of a small clearing on this farm—the results of much hard labor and exposure to inclement weather—they provided for the family and gave us plenty of plain and substantial food to eat, suitable clothes to wear and a comfortable place to live.

With many sacrifices and deprivations on their part, made with that unselfishness which showed the extent of the love it is possible for a father and mother to have for a child and the interest they took in the success of their children, they made it possible for me to have the opportunities to obtain an education, not within the reach, during my school days, of the average country boy.

I feel that to them, in a very great degree, if not entirely, I owe whatever success I have attained or met with, and in this way I wish to express and hope to show my full appreciation of what they have done for me and made it possible for me to do for myself. Therefore, with that love, respect and reverence due a loving and unselfish father and mother by a son, I dedicate to them this work with whatever merit it contains.

W. H. DANIELS.

PREFACE TO THIRD EDITION.

The first edition of this work was, in part, written by me, as a reply to a letter received from my friend, W. H. Gillespie, of Nashville, Tenn., who at that time was the special agent of the Continental Insurance Company, of New York, in Tennessee.

His letter was as follows:

MR. GILLESPIE'S LETTER.

Nashville, Tenn., July 1, 1901.

W. H. Daniels, Esq., Special Adjuster, Continental Insurance Company, Chicago, Ill.:

Dear Sir—I am in need of some information as to the correct method of making the apportionment of the insurance, where there is a general policy covering under one item, property which is specifically insured in other policies, as two or more items, and trust that you have the time to give me the desired information. I find the opinion of many of the adjusters I meet is that the specific insurance should first be exhausted, and the general insurance pay the remainder. It seems to me that if this custom were practiced at all times, it would work a hardship on the company carrying the specific insurance, where there is a partial loss only, on the goods covered by such specific policy. There are other methods resorted to for an apportionment of the insurance in these cases, but none of them seem to fairly and completely cover the conditions which exist in this class of claims, though all of them seem more equitable and more in accord with the policy than the one I have mentioned as being in general use.

I have in mind a case which I will take the liberty of submitting to you. If you are in possession of any information by which this kind of loss is treated, I hope you will give it to me.

In the case I wish to submit, the Continental insures $2,500 on wheat, $3,000 on corn and $2,000 on oats, making a total insurance of $7,500. The Aetna insures $5,000 and the Home $6,000 on grain. The sound value of the wheat was $8,000, corn $7,000 and of oats $10,000. The loss on wheat was $3,000, corn $4,000 and on oats $8,000. What would be the proper way to apportion this insurance, and what amount would each company pay?

If you should have in your possession a form that would facilitate the apportionment of such losses, I would appreciate your furnishing me with such form and any information you think will aid me. Yours very truly,

W. H. Gillespie,
Special Agent.

The second edition of this work was much more complete than the first, and considerably larger, but it remained in the form of a communication.

In this edition, which is much larger than the second, I have changed it from the form of a letter and have indexed it, showing where the different subjects treated can be found; also, it contains an index of the cases cited and the decisions given in full.

This edition is necessitated by the large demand for a work of this kind, and it is now, as a book of reference, much more valuable than heretofore, because of the increased size, change in form and the indexes.

AUTHOR.

December 1, 1912.

The Apportionment *of* Loss *and* Contribution *of* Compound Insurance.

An adjustment problem was submitted to me by a friend, where the assured had three policies, insuring him against loss or damage on grain; some of the insurance being specific and some compound.

The adjustment shows that there was a loss of $3,000 on wheat where the sound value was $8,000; that corn worth $7,000 was damaged $3,000, and that the loss on his $10,000 worth of oats was $8,000. You say that the Aetna policy covered $5,000 on grain and that the Home policy was for $6,000 on grain, while the Continental policy covered specifically $2,500 on wheat, $3,000 on corn and $2,000 on oats.

If I were to make the proper apportionment of the compound insurance and figure the contribution to be made by each company, it would dispose of this claim, but if I should do that and nothing more, it would not explain the full scope of the rule I apply and why I use it rather than some one of the other rules now being used.

That I may show my position on this class of claims and explain fully the reasons I have for insisting on the application of a certain rule, prompts me to go into the discussion of the whole question.

We may not fully realize the importance of the proposition which was submitted to me for my consideration. It involves some of the most intricate questions we find in the adjustment of losses, and for many years such cases as you have submitted have been the source of serious anxiety in the loss departments of the various insurance companies, and have been the basis for a large number of contests before the courts. The insurance men of the past, and of to-day, who were, and are, because of their interest and work in the adjustment of loss claims, thoroughly posted, have not agreed and do not agree what each company should pay in such a case as you have submitted. Similar cases have received the attention of the courts during the past fifty years,

and it is safe to say that the decisions of the courts as to how the losses in this case should be apportioned among the companies are not in harmony.

In the case of the Howard Insurance Company vs. Scribner, which was before the Supreme Court of the State of New York, the judges say in their decision:

"It is not denied that the division must be entirely arbitrary, and the different methods proposed by the parties best accord with their respective interests. Neither has cited any cases where such a thing has been done, nor mentioned any principle by which we should be authorized thus to modify the contract of parties. Something like it was, I perceive, once attempted by a private hand, and with about the same success as has attended the efforts of counsel here."

The above language was used by Judge Cowen, who wrote the opinion.

Judge Ostrander, in his work entitled, "Ostrander on Fire Insurance," when commenting on the decision of Judge Cowen, above referred to, says:

"Then, as now, no learning of the courts, no ingenuity of the counsel, can explain that which is essentially inexplicable. Cases are sometimes presented where the complications defy human understanding. When this occurs—when reason is baffled and mathematics fail—arbitrary action becomes a necessity. The knot we cannot untie must be cut."

When we stop and carefully consider the various rules which are arbitrarily applied in these cases by the adjusters of to-day, we are justified in asking the question: What improvement has the last fifty years produced in the apportionment of the insurance and losses in such cases as you have submitted? This question is somewhat simplified now by the use of policies which contain a uniform pro rata contribution clause.

It would seem that from the various decisions which have been made by the highest courts in the States, as well as by the circuit courts and Supreme Court of the United States, in this class of cases, some rule of apportionment and contribution could be formed. When these cases come before the courts for a decision, the court has presented, usually, only two propositions. One proposition is made by the plaintiff and another is contended for by the defendant, and the rule which each contestant urges for the consideration of the court is that one which will best serve his interest.

The courts have repeatedly decided that if the assured in such cases as you have submitted has as

much or more insurance than the amount of loss, his loss must be paid in full, and no rule of apportionment which fails to pay the loss in full will be recognized by the courts.

The decision of the courts, to permit no rule of apportionment of compound insurance to be used which deprives the assured of his full loss, when his total insurance is equal to or greater than his loss, should not be treated as applying to cases where there is no compound insurance. This rule of the courts takes effect only, when it becomes necessary because of non-concurrent insurance, to make an arbitrary apportionment of compound insurance. When the policies fix the specific insurance, or the loss liability is provided for in the policies and they are concurrent, the only question being as to the amount each policy will contribute to satisfy the claim, there is no arbitrary apportionment of the insurance, and therefore the assured is not entitled to the application of this generous rule of the courts.

Sometimes these cases come before the courts because the companies do not agree on a rule of apportionment, and the assured is forced to ask the aid of the courts to effect a settlement; but generally the assured is compelled to bring suit because some company, or companies, insist on applying a rule of apportionment, which gives a salvage and fails to indemnify the assured for his loss.

If you should study the decisions made by the courts, you would very quickly become convinced that the courts' consideration of any case was confined to the two propositions or rules of apportionment contended for by the parties to the suit. The rule which would pay the full loss would receive the approval of the court, though the same rule—if the losses were different on the various items—would, if applied, fail to pay the loss in full, and would therefore be rejected.

In the case of Angelrodt & Barth vs. Delaware Mutual Insurance Company, 31 Mo. 593, the lower court applied the Reading rule, and while the loss exceeded the insurance, the application of this rule gave the defendant a salvage.

THE READING RULE.

Compound insurance shall contribute with specific in proportion as the value of the specific property bears to the value of all the property covered by the compound policy.

The Supreme Court rejected this rule, and said the rule was all right; but, as it gave the insurance company a salvage when the loss exceeded the insurance, it could not be applied.

The court applied the Cromie rule, and it gave the assured the whole of the insurance, which was $175.75 less than the loss.

THE CROMIE RULE.

When the compound insurance covers property which is not covered by the specific insurance, a portion of the compound insurance equal to the amount of loss on the property not covered by the specific insurance, must be set aside to pay the loss. The remainder of the compound insurance contributes with the specific to pay the loss on the property covered by the specific insurance. If the loss on the property covered only by the compound insurance is equal to or greater than the amount of the compound insurance, the compound insurance will be exhausted and there will be nothing to contribute from to help out the specific insurance.

The decision in this case will give you some idea of the reasons why the opinions of the courts have not established the rules to be applied in all these cases, for the apportionment of compound insurance.

THE INSURANCE CONTRACT.

In considering this class of claims, it is of the utmost importance to have a correct understanding of the insurance contract. We are in the habit of speaking as if the property was insured. We frequently say and hear it said: "The barn was insured," or "The horse was insured." By using these erroneous expressions we are apt to lose sight of the real agreement.

It is a personal contract, and does not insure property, but does insure the assured.

It is an agreement on the part of the insurance company to indemnify the assured for loss or diminution of value of the property described in the policy, resulting from the cause or causes of loss and damage mentioned in the contract.

In May, on insurance, the author says:

"Whether the subject-matter of insurance be a ship, or a building, or a life, or whatever else it may be, although in popular language it may be called an insurance upon the ship or building or life, or

some other thing, yet it is strictly an agreement with some person interested in the preservation of the subject-matter to pay him a sum that will amount to an indemnity."

Lord Chancellor Hardwicke said: "To whom or for what loss are they (the Hand-in-Hand Fire Office) to make satisfaction? Why, to a person insured and for the loss he may have sustained; for it cannot properly be called insuring the thing, for there is no possibility of doing it, and therefore must mean insuring the person from damage."

PRO RATA CONTRIBUTION CLAUSE.

The contribution between the companies to pay the loss is provided for by the pro rata contribution clause of the policy. (See lines 96 to 100 of the New York standard policy, which are):

"This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by, and expense of, removal from premises endangered by fire, than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers, covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss, may be provided for by agreement or condition written hereon or attached or appended hereto."

The portion of this clause, which is the basis for our consideration of this proposition, is:

"This company shall not be liable under this policy for a greater proportion of any loss on the described property * * * than the amount hereby insured shall bear to the whole insurance * * * covering such property * * *."

It is important at this time to understand fully what is meant by the words, "covering such property." The company insured the assured, and by its policy agrees to indemnify him against loss or damage to the described property. The total property described and covered under a fixed amount may be composed of several classes, or it may be in several locations, or the subject of insurance may be several interests, and the loss may be on less than all the classes, or in less than all the locations, or on less than all the interests.

It should be remembered when considering this question of apportionment and contribution of nonconcurrent insurance, that the rules apply only when

all the policies involved are issued to the same assured. The non-concurrency, because of different interests, does not mean different interests created because of joint ownership, or because the property is owned by two or more persons doing business as a partnership, when one or more of the joint owners, or partners, insure their individual interests. The different interests contemplated are those created by the use of the limitation clauses, which I will call your attention to later.

If the policy covered on all the classes, or in all the locations, or on all the interests, after the fire as before, the insured might be deprived of his full indemnity, though insured for more than the amount of loss. The facts are that all the insurance named in the policy, which is the specific insurance liability on different classes, or in different locations, or on different interests, unless there is an average clause, distribution form, covers for the purpose of paying the loss on that portion of the described property which has been destroyed or damaged.

This point is of much importance, and is really indispensable to a proper consideration of the proposition submitted, and for that reason I take the liberty of copying extensively from the case of Page Bros. vs. Sun Fire Office, decided by the United States Circuit Court of Appeals, and the case of the Le Sure Lumber Company vs. Mutual Fire Insurance Company of New York, decided by the Supreme Court of Iowa.

In the case of Page Bros. vs. Sun Fire Office, which was decided in November, 1896, there were two lumber yards and there was specific insurance on the lumber in each and compound insurance, covering lumber in both yards. The loss was confined to one yard.

STATEMENT.

"Edward S. Page and Chas. H. Page, co-partners as Page Bros., the plaintiffs in error, were the owners of lumber, lath and shingles of the value of $59,095.52, situated on two blocks in the city of Anoka, Minn. That portion of this property situated on the easterly of these two blocks was worth $16,727.06, and that portion of this property situated on the westerly of these blocks was worth $42,368.46. On November 10, 1893, a fire caused a loss of $30,982.02 on that portion of their property situated on the westerly block, but caused no damage or loss upon the property situated on the easterly block. At the time

of this fire the plaintiffs in error held policies of insurance to the amount of $40,000 on this entire property situated on both blocks and policies to the amount of $10,000 upon that portion of this property situated on the westerly block. One of the latter policies, for the amount of $2,500, was issued by the Sun Insurance Office, the defendant in error. This policy contains this provision:

Pro Rata Contribution Clause.

"This company shall not be liable under this policy for a greater proportion of any loss on the described property * * * than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers, covering such property."

Decision.

"Upon this statement of facts the court below held, in an action upon this policy, that both the $10,000 insurance upon the property on the westerly block only, and the entire $40,000 insurance upon all the property on both blocks, covered the property situated on the westerly block and described in this policy, and that the plaintiffs in error could recover only $2,500, fifty-thousandths of the amount of the loss on this policy, which is $1,549.10. Judgment was accordingly entered for that amount, and this writ of error was sued to reverse it (64 Fed. 194). The only error assigned is that only such a proportion of the $40,000 insurance upon the property upon both blocks as the value of the property upon the westerly block bore to the value of the property upon both blocks (that is to say, only 4,236,846/5,909,552 of $40,000), which is $28,677.95, covered the property upon the westerly block, within the true meaning of the clause of the policy in suit which we have quoted; that the whole insurance covering the property on this block was consequently only $38,677.95; and that the defendant in error is consequently liable for 250,000/3,867,795, of $30,982.02, the total loss, which is $2,002.56. Ingenious and persuasive arguments have been presented to sustain this assignment, but the unambiguous terms of the contract are fatal to them all. This contract is too plain to permit construction, too positive to allow evasion, and too clear to admit of doubt. It provides that this defendant in error shall not be liable for any greater proportion of the loss on the property described in it than the amount

insured by it shall bear to the whole insurance covering the property it describes. It will not do to say that the policies for $40,000, which insured both this property on the westerly block and that upon the easterly block, did not cover to their full amount the property described in this policy. The whole includes all its parts, and that which covers the whole covers every part that constitutes the whole. The policy in suit requires the insured to state in his proofs of loss "all other insurance, whether valid or not, covering any of said property." If, pursuant to this provision, the plaintiffs in error had stated in their proofs of loss that the amount of their insurance on this property by virtue of these compound policies for $40,000 was only $28,677.95, it is plain that their statement would not have been true. If the loss upon the property on this westerly block had been $80,000, instead of $30,982.02, the insured could certainly have collected the full $40,000 on these compound policies. How, then, can it be said that the entire $40,000 of insurance furnished by these compound policies did not cover the property damaged?

"Arguments and authorities have been urged upon our consideration in support of the proposition that a more just and equitable division of the loss between the companies which issued the compound policies covering the property upon both blocks, and those which issued the specific policies on the property upon the westerly block only, would be effected by treating the former as insuring the plaintiffs in error to the amount of $28,677.95 on the property on the westerly block, and to the amount of $11,322.05 on the property on the easterly block. But that question is not presented by this record. According to the agreed statement of facts upon which this case was submitted, the $40,000 of insurance was not so placed. The question before us is not what contribution each company which insured this property ought in equity to make to the payment of this loss, in the absence of express contracts fixing their liabilities, and we are compelled to decline to follow counsel into the consideration of that and cognate questions. It is not our province to make contracts for the parties to this suit, or to modify those which they have themselves deliberately made, because it appears to us that they might have made those that would have been more equitable or more advantageous. They have made a contract themselves which fixes the amount of the liability of the defendant for this loss. This action is founded on that contract,

and it is the sole measure of the defendant's liability. The only question here is whether or not the plaintiffs in error may recover, under this policy, any greater proportion of the loss upon the property which it describes than that which the amount insured by it bears to the entire insurance covering that property. The policy expressly provides that they cannot, and that must close the discussion.

"The result is that, under a clause in a policy of insurance which provides that the company shall not be liable for a greater proportion of any loss on the property described therein than that which the amount insured thereby shall bear to the whole insurance covering such property:

"First. Compound policies insuring the property described in such a policy, and other property, cover the property so described, to their full amount, in case of a loss upon the property described in the specific policy, and no less on the other property described in the compound policies.

"Second. In such a case the company issuing the specific policy is liable for no greater proportion of the loss than that which the amount of such policy bears to the total amount of both the compound and specific policies covering the property it describes: Merrick vs. Insurance Company, 54 Pa. St. 277, 281, 282, 284. The judgment below is affirmed with costs."

Page Bros. vs. Sun Fire Office, 25 Ins. Law Journal 865.

The case of the Le Sure Lumber Company vs. Mutual Fire Insurance Company was decided April 9, 1897.

LE SURE LUMBER CO. DECISION.

"On the 12th day of March, 1894, the defendant issued to the plaintiff a policy insuring it for the term of one year against loss or damage by fire, to the amount of $10,000 on its stock of lumber in certain yards in the city of Dubuque. On the 9th day of June, in the same year, lumber to the value of $74,478.55, in two of the yards, was destroyed by fire. The total insurance on the lumber destroyed was $68,500. The verdict and judgment were for the full amount of the policy, with interest.

"The next and last question we are required to determine involves the real controversy of the parties to this action, and relates to the proper interpretation of a provision of the policy which is, in words, as follows: 'This company shall not be liable under

this policy for a greater proportion of any loss on the described property * * * than the amount hereby issued shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers, covering such property. * * * The policy in suit, as already stated, was for the sum of $10,000, and covered all the lumber in three yards owned by the plaintiff, and referred to as the 'north yard,' 'south yard' and 'yard north of Seventh street.' The entire insurance on the lumber in the three yards amounted to $115,000. Policies to the amount of $14,500, called 'blanket policies,' including that in suit, covered all the lumber in the three yards. In addition, there was specific insurance to the amount of $54,000 on the lumber in the north yard, and to the amount of $46,500 on the lumber in the south yard. The lumber in the yard last named was uninjured. The loss sustained in the other two yards was $74,478.85, while the blanket and specific insurance upon the property lost was but $68,500. The defendant contends that its liability for the loss is as $10,000, the amount of its policy, is to $115,000, the total amount of the insurance on the three yards, or for 2/23 of $74,478.85. It tendered to the plaintiff that amount ($6,476.42) with interest from the termination of sixty days from the notice and proof of loss to the date of the tender. The plaintiff contends that this is not a case for the application of any rule of apportionment; that, as the value of the property lost was greater than the insurance upon it, the defendant is liable for the full amount of its policy and interest, and the district court so held. The policy was designed to secure the plaintiff against loss by fire in any or all of the yards to the full amount of the policy. It covered all of the property which was destroyed, and, if it is paid in full, it will not fully compensate the plaintiff for the loss sustained. In ascertaining the amount of insurance, for the purposes of an apportionment, it would be just, in the absence of a stipulation to the contrary, to consider only the insurance on the property injured or destroyed; and it will be presumed, in the absence of a showing to the contrary, that the parties to the contract intended to provide for a just result. The language they used does not necessarily mean that in case of loss the defendant should only be liable for such proportion of it as the amount it insured was of the total insurance on all the property described in its policy, whether the concurrent insurance was on all the property, or only a part of it. We think

a permissible, and the correct, interpretation of the policy is that in case of a loss the defendant was not to be liable for a greater proportion of it than the amount of its policy bore to the total insurance on the property injured or destroyed. It is true, the words 'described property,' if not modified, refer to all of the property covered by the policy, and the phrase, 'covering such property' is equally comprehensive; but considered in their relation to the word 'loss,' and the purpose for which the policy was issued, we are of the opinion that they should be held to refer to property which should be injured or destroyed. See Erb vs. Insurance Company (Iowa), 69 N. W. 263; Merrick vs. Insurance Company, 54 Pa. St. 277. There was nothing in the evidence in conflict with the conclusion we reach. Hence the District Court properly directed a verdict for the plaintiff for the amount of the policy in suit, and interest. Its judgment is therefore affirmed."

Le Sure Lumber Company vs. Mutual Fire Insurance Company, 70 Northwestern Reporter 761.

There are two points which I have tried to present to you, that you should remember, and if you understand them you are well prepared to consider the rules used in disposing of these cases.

First. It is the assured who is insured and not the property.

Second. All of the insurance—unless there is an average clause, distribution form on the policy—covers for the purpose of paying the loss, only on the property which has been destroyed or damaged.

The rule which you say the adjusters in your field seem to be using quite generally should not be used unless the compound policy is excess insurance.

EXCESS INSURANCE.

The rules which would make the specific insurance pay the loss without regard to the compound insurance, if the specific insurance was equal to, or greater than, the loss, should be, if used, a part of the compound policy, and it then makes the policy excess insurance. A policy is not excess insurance, unless it contains a condition which is a part of the contract, and usually reads as follows: "Not to be liable to contribution for loss thereon, until after all or any specific insurance on the property shall have been exhausted."

THE READING RULE.

"Compound insurance shall contribute with specific in proportion as the value of the specific property bears to the value of all the property covered by the compound policy."

As this rule is quite often used in apportioning the compound insurance, I will apply it to this case to get results, so that I can make plain to you my objections to its use.

STATEMENT.

Continental—On wheat, $2,500; loss, $3,000; sound value, $8,000.

Continental—On corn, $3,000; loss, $4,000; sound value, $7,000.

Continental—On oats, $2,000; loss, $8,000; sound value, $10,000.

Aetna—On grain, $5,000.

Home—On grain, $6,000.

The sound value of the wheat is $8,000; of the corn, $7,000 and of the oats, $10,000, making a total valuation of $25,000. The Aetna and Home insurance is made to cover eight twenty-fifths on wheat, seven twenty-fifths on corn and ten twenty-fifths on oats.

Apportionment and Contribution on Wheat.

Continental insures	$2,500	Pays	$1,245.85
Aetna insures	1,600	Pays	797.34
Home insures	1,920	Pays	956.81
Total loss paid			$3,000.00

Apportionment and Contribution on Corn.

Continental insures	$3,000	Pays	$1,973.68
Aetna insures	1,400	Pays	921.06
Home Insures	1,680	Pays	1,105.26
Total loss paid			$4,000.00

Apportionment and Contribution on Oats.

Continental insures	$2,000	Pays	$2,000.00
Aetna insures	2,000	Pays	2,000.00
Home insures	2,400	Pays	2,400.00
Total loss paid			$6,400.00

The assured is paid his full loss on wheat and corn, but with an insurance of $18,500 and a loss of $15,000, lacks $1,600 of receiving his full loss on oats. As the application of the Reading Rule in this case fails to pay the assured his full loss, and the companies make a salvage, some other rule would have to be applied because the assured must be paid his full loss.

The Reading Rule, which I have applied to your case, is made to be used after a loss, to apportion the compound insurance and thereby make it specific, and it produces the same results as the distribution form of the average clause, which is intended to be put on the policy when it is issued, and to be a part of the contract from its date.

AVERAGE CLAUSE—DISTRIBUTION FORM.

It is understood and agreed that the amount insured by this policy shall attach, in each of the above-named premises, in that proportion of the amount hereby insured, that the value of property covered by this policy, contained in each of said places, shall bear to the value of such property contained in all of above-named premises.

There is a case, lately decided by the Supreme Court of Vermont, where the Reading Rule was used.

Decision.

"The policy issued by the defendant contained this provision: 'This company shall not be liable under this policy for a greater proportion of any loss on the described property than the amount hereby insured shall bear to the whole insurance covering such property.'

"The plaintiff held a fire insurance policy in the defendant company, covering specific sums on three items, viz.: $562.50 on item a, $612.50 on item b, $325 on item c. He held in the Home Company a like policy for $262.50 on item a, $375 on item b, and $112.50 on item c. He held policies in the Lloyds Association for $12,700, called 'blanket policies,' insuring the same property as one item. The property was totally destroyed, the loss being the full value, and was less than the total amount of insurance. The loss on the respective items was as follows: $3,491.48 on item a, $6,230.37 on item b, and $2,041.70 on item c. The question presented is, what proportion of the loss shall the respective companies pay?

The rule which must be applied to determine this is a legal, just and equitable one, and is found in the policies. It is that each company shall pay such proportion of the loss as the sum insured by it bears to the total insurance. The difficulty in adjusting the proportion which each company shall pay arises from the fact that some of the policies are specific and others blanket. As, by the terms of the specific policies, they cannot be converted into blanket policies, it necessarily follows that the only way in which the loss can be adjusted is to turn the blanket policies into specific ones, i. e., determine how much of the full amount of a blanket policy shall be apportioned to each of the three respective items, according to their respective values. The value of the items, as shown by the loss, is as follows: Item a, $3,491.48; item b, $6,230.37; item c, $2,014.70, equalling $11,736.55. Apportioning the amount of the blanket policies—$12,700—upon the amount of the loss by using the proportion as the value of the whole property is to the whole blanket insurance, so is the value of each item to the insurance on each item, we find the insurance on each item to be, item a, $3,778.09; item b, $6,741.82; item c, $2,180.09, equalling $12,700, and the total amount of the insurance upon each item to be, item a, $4,603.09; item b, $7,729.32; item c, $2,617.59. As each company pays in the ratio that the amount of its policy bears to the total amount of insurance, the defendant is liable in respect to item a, $426.66; item b, $493.73; item c, $250.14, equalling $1,170.53—the amount for which judgment was entered below. The judgment is correct and is affirmed."

Chandler vs. Insurance Company of North America, 41 Atlantic Reporter 502.

After reading this case, we know the court applied the Reading Rule, to apportion the compound insurance; but we cannot determine from this decision, and we have no intimation, what the court would have done if the value and loss of item A had exceeded $4,603.09, or if the value and loss of either one of the other items had been greater than the total specific insurance as fixed by the court.

In this case the property covered by the compound insurance was all destroyed, and it was worth less than the total insurance, therefore the loss and value were the same. If the court had used the word "loss" in place of "value," the rule used would have been the "Griswold," and not the "Reading."

When there are one or more items of property, which are covered by specific insurance, on which there is a loss, the application of the Reading Rule usually carries so much of the compound insurance to the items of property covered by specific insurance, and not destroyed or damaged, that the assured, though having more insurance than loss, is not paid in full for his loss.

There is no question but that if the compound and specific insurance equals or exceeds the amount of loss to the property covered by it, the assured's loss must be paid in full, regardless of the result which any particular rule of apportionment may produce.

If the words in the Reading Rule "covered by the compound policy" mean only the property destroyed or damaged, then it differs from the average clause. I am unable to find any case where the court has applied to this rule any such construction, neither have I met any adjuster who advocated this rule, who gave it any such construction. I therefore feel justified in making the statement that to adjust a loss and apply the Reading Rule is to make, subsequent to a fire, a new contract and one, if it is to be recognized, should have been made when the policy was written by putting the average clause on the policy.

This rule is also objectionable because it is not susceptible of general application. As, for instance, in the case of Angelrodt & Barth vs. Delaware Mutual Insurance Company, 31 Mo. 593, the court applied this rule, and as it failed to fully indemnify the assured, and gave the insurance company a salvage, when the loss exceeded the total insurance, it was rejected and another rule applied.

It is in conflict with the rule made by the courts in the following cases:

Cromie vs. Kentucky and Louisville Insurance Company, 15 B. Monroe Ky. 432.

Angelrodt & Barth vs. Delaware Mutual Insurance Company, 31 Mo. 539.

Page Bros. vs. Sun Fire Office, 25 Ins. Law Journal. 865.

Le Sure Lumber Company vs. Mutual Fire Insurance Company, 70 Northwestern Reporter 61.

In the case of Page Bros. vs. Sun Fire Office, 25 Ins. Law Journal. 865, the assured asked to have the compound insurance made specific on the basis of the sound value, or to have the Reading Rule applied. The court refused to apportion the insurance in accordance with the Reading Rule, and discussed the question as follows:

"The only error assigned is that only such a proportion of the $40,000 insurance upon the property upon both blocks as the value of the property upon the westerly block bore to the value of the property upon both blocks (that is to say, only 4,236,846/5,909,552 of $40,000), which is $28,677.95, covered the property upon the westerly block, within the true meaning of the clause of the policy in suit which we have quoted; that the whole insurance covering the property on this block was consequently only $38,677.95; and that the defendant in error is consequently liable for 250,000/3,867,795 of $30,982.02, the total loss, which is $2,002.56. Ingenious and persuasive arguments have been presented to sustain this assignment, but the ambiguous terms of the contract are fatal to them all. This contract is too plain to permit construction, too positive to allow evasion, and too clear to admit of doubt. It provides that this defendant in error shall not be liable for any greater proportion of the loss on the property described in it than the amount insured by it shall bear to the whole insurance covering the property it describes. It will not do to say that the policies for $40,000, which insured both this property on the westerly block and that upon the easterly block, did not cover to their full amount the property described in this policy. The whole includes all its parts, and that which covers the whole covers every part that constitutes the whole.

"The result is that, under a clause in a policy of insurance which provides that the company shall not be liable for a greater proportion of any loss on the property described therein than that which the amount insured thereby shall bear to the whole insurance covering such property:

"*First. Compound policies insuring the property described in such a policy, and other property, cover the property so described to their full amount, in case of a loss upon the property described in the specific policy, and no loss on the other property described in the compound policies.*

"*Second. In such a case the company issuing the specific policy is liable for no greater proportion of the loss than that which the amount of such policy bears to the total amount of both the compound and specific policies covering the property it describes.*"

In the case of The Le Sure Lumber Company vs. Mutual Fire Insurance Company, 70 Northwestern Reporter 761, the insurance company did not ask to have the Reading Rule applied, but it did request that its liability be limited to such a proportion of

the loss, as its policy bore to all the insurance on the lumber in the two yards burned and the one not burned. The court decided that all of the insurance covered for the purpose of paying the loss on the property injured or destroyed, and this decision is fatal to the Reading Rule. The court, in deciding the case, says:

"On the 12th day of March, 1894, the defendant issued to the plaintiff a policy insuring it for the term of one year against loss or damage by fire, to the amount of $10,000 on its stock of lumber in the city of Dubuque. On the 9th day of June, in the same year, lumber to the value of $74,478.55, in two of the yards, was destroyed by fire. The total insurance on the lumber destroyed was $68,500. The verdict and judgment were for the full amount of the policy, with interest.

"The next and last question we are required to determine involves the real controversy of the parties to this action, and relates to the proper interpretation of a provision of the policy which is, in words, as follows: 'This company shall not be liable under this policy for a greater proportion of any loss on the described property * * * than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers, covering such property * * *.' The policy in suit, as already stated, was for the sum of $10,000, and covered all the lumber in three yards owned by the plaintiff, and referred to as the 'north yard,' 'south yard,' and 'yard north of Seventh street.' The entire insurance on the lumber in the three yards amounted to $115,000. Policies to the amount of $14,500, called 'blanket policies,' including that in suit, covered all the lumber in the three yards. In addition, there was specific insurance to the amount of $54,000 on the lumber in the north yard, and to the amount of $46,500 on the lumber in the south yard. The lumber in the yard last named was uninjured. The loss sustained in the other two yards was $74,478.85, while the blanket and specific insurance upon the property lost was but $68,500. The defendant contends that its liability for the loss is as $10,000, the amount of its policy, is to $115,000, the total amount of the insurance on the three yards, or for 2/23 of $74,478.85.

"The policy was designed to secure the plaintiff against loss by fire in any or all of the yards to the full amount of the policy. It covered all of the property which was destroyed, and, if it is paid in full, it will not fully compensate the plaintiff for the loss

sustained. In ascertaining the amount of insurance for the purpose of apportionment, it would be just in the absence of a stipulation to the contrary, to consider only the insurance on the property injured or destroyed; and it will be presumed in the absence of a showing to the contrary, that the parties to the contract intended to provide for a just result. *The language they used does not necessarily mean that in case of loss the defendant should only be liable for such proportion of it as the amount it insured was of the total insurance on all the property described in its policy, whether the concurrent insurance was on all of the property, or only a part of it.* We think a permissible, and the correct, interpretation of the policy is that in case of a loss the defendant was not to be liable for a greater proportion of it than the amount of its policy bore to the total insurance on the property injured or destroyed. *It is true, the words 'described property,' if not modified, refer to all of the property covered by the policy, and the phrase 'covering such property' is equally comprehensive; but considered in their relation to the word 'loss,' and the purpose for which the policy was issued, we are of the opinion that they should be held to refer to property which should be injured or destroyed.*" .

There are two rules which are used frequently, but they have not been approved by the courts, except in one case, so far as I have been able to learn. In the case of Sherman vs. Madison Mutual Insurance Company, 39 Wis. 104, which was decided in 1876, the rules I refer to were used in the adjustment of a claim for loss on live stock. I will refer to this case later, and give you a copy of it. These rules are so easily applied, so frequently used, so palpably wrong, and so clear a violation of the conditions of the policy, that it would be improper to pass them without consideration.

One of them is very generally used, and I will apply it first:

HARTFORD RULE.

The compound insurance contributes from its full amount with the specific, to pay the loss on the first item in the general form on which there is a loss. The remainder of the compound insurance, after deducting amount of loss paid, contributes with the specific insurance on the next item in the general form on which there is a loss. This plan to be followed until the whole loss is paid or the compound insurance is exhausted.

I give this rule the name of Hartford Rule, because the only man whom I ever heard advocate its use was a representative of the Hartford Fire Insurance Company.

I will apply the above rule to this case that you may clearly understand it.

STATEMENT.

Continental—On wheat, $2,500; loss, $3,000.
Continental—On corn, $3,000; loss, $4,000.
Continental—On oats, $2,000; loss, $8,000.
Aetna—On grain, $5,000.
Home—On grain, $6,000.

Apportionment and Contribution on Wheat.

Continental insures	$2,500	Pays	$555.56
Aetna insures	5,000	Pays	1,111.11
Home insures	6,000	Pays	1,333.33
Total loss paid			$3,000.00

Apportionment and Contribution on Corn.

Continental insures	$3,000.00	Pays	$1,038.47
Aetna insures	3,888.89	Pays	1,346.15
Home insures	4,666.67	Pays	1,615.38
Total loss paid			$4,000.00

Apportionment and Contribution on Oats.

Continental insures	$2,000.00	Pays	$2,000.00
Aetna insures	2,542.74	Pays	2,542.74
Home insures	3,051.29	Pays	3,051.29
Total loss paid			$7,594.03

The results, as you will see, are that we exhaust the compound insurance and fail to pay the full loss. The assured, though he has more insurance than loss, loses by the application of this rule $405.97.

The apportionment made for the Aetna by the application of this rule was:

On wheat	$5,000.00
On corn	3,888.89
On oats	2,542.74
Total	$11,431.63

The Home is required to contribute from an apportionment as follows:

On wheat	$6,000.00
On corn	4,666.67
On oats	3,051.29
Total	$13,717.96

The results are that the Aetna, with a policy of $5,000, is made to contribute from $11,431.63, and the Home contributes from $13,717.96, when the amount of the policy is only $6,000.

CHICAGO RULE.

The compound insurance contributes from its full amount with the specific to pay the loss on the item covered by specific insurance on which there is the largest loss. The remainder of compound insurance after deducting amount of loss paid contributes with the specific insurance on the item having the second largest loss. This plan to be followed until the whole loss is paid or the compound insurance is exhausted.

I call this the Chicago Rule because it seems to be the favorite rule of many of the Chicago adjusters, and its use in the cases of compound and specific insurance is advocated by them.

This rule differs a very little from the one just applied, and is more frequently used. I will apportion the insurance according to it, to demonstrate that it is wrong.

STATEMENT.

Continental—On wheat, $2,500; loss, $3,000.
Continental—On corn, $3,000; loss, $4,000.
Continental—On ots, $2,000; loss, $8,000.
Aetna—On grain, $5,000.
Home—On grain, $6,000.

Apportionment and Contribution on Oats.

Continental insures	$2,000	Pays	$1,230.77
Aetna insures	5,000	Pays	3,076.92
Home insures	6,000	Pays	3,692.31
Total loss paid			$8,000.00

Apportionment and Contribution on Corn.

Continental insures	$3,000.00	Pays	$1,659.58
Aetna insures	1,923.08	Pays	1,063.84
Home insures	2,307.69	Pays	1,276.58
Total loss paid			$4,000.00

Apportionment and Contribution on Wheat.

Continental insures	$2,500.00	Pays	$1,708.29
Aetna insures	859.24	Pays	587.13
Home insures	1,031.11	Pays	704.58
Total loss paid			$3,000.00

From the application of this rule, the assured is paid the full amount of his loss and all the companies have a salvage.

The Aetna has to contribute from an apportionment as follows:

On oats	$5,000.00
On corn	1,923.08
On wheat	859.24
Total	$7,782.32

The application of this rule makes the following apportionment for the Home:

On oats	$6,000.00
On corn	2,307.69
On wheat	1,031.11
Total	$9,338.80

This rule produces more equitable results than the other, because a larger part of the compound insurance is paid on the loss on oats.

The Aetna, with a $5,000 policy, contributes from $7,782.32, and the Home contributes from $9,338.80, with a $6,000 policy.

These two rules for the apportionments of compound policies should never be used.

The limit of liability of the company is fixed by the terms of the policy.

"This company shall not be liable under this policy for a greater proportion of any loss on the described property * * * than the amount hereby insured shall bear to the whole insurance * * * covering such property."

Any rule which requires a company to contribute from one cent more than the full amount of insurance, on the described property named in the policy, or the amount made specific by the average clause, distribution form, is clearly and positively in conflict with the conditions of the policy.

APPORTIONMENT AND CONTRIBUTION OF NON-CONCURRENT INSURANCE.

The rule which I have named the "Chicago Rule" requires the compound insurance to contribute from its full amount with the specific insurance, on the item specifically insured on which there is the largest amount of loss, and then the remainder of the compound insurance, after deducting the amount of loss it pays under the first apportionment, contributes with the specific insurance on the item specifically insured, which has suffered the second largest amount of loss. This plan to be repeated until the losses are paid or the compound insurance is exhausted.

The Rule Upheld.

I have a record now of four cases where the courts of last resort in as many different States have upheld the above rule, and in one case, the court, in approving the rule, entered into an elaborate discussion of some of the points involved. This opinion, which was rendered by the Supreme Court of Connecticut, will be given in full herein.

The attention of every person who is interested in the subject of apportionment and contribution of non-concurrent insurance, is particularly called to this Connecticut decision, because it furnishes a basis for a careful and intelligent study of the application of this rule. I would like to suggest to each person, who reads this communication, who occupies a position with a company which makes him in any degree responsible for the expense of adjusting claims, to keep in mind the fact that it is very expensive to carry a case through the Supreme Court of a State, even if it goes there on an agreed statement of facts. Why, therefore, do not all of the insurance companies east of the Pacific Coast field, do as the managers on the Pacific Coast have done, and that is to adopt some rule which is equitable, and which to the least extent violates the contracts, and which is susceptible of the most general application, and thereby keep all of these cases out of the courts? If every adjuster would go to a loss with instructions to use the same rule in all cases of non-concurrent insurance, there would be no delay in the adjustment and no law suits resulting therefrom.

The first case in which this rule was to any extent recognized was decided in 1876 by the Supreme Court of Wisconsin. This was the case of Sherman vs.

Madison Mutual Insurance Company, 39 Wis. 104. In this case the claim was for the loss of several head of cattle, and the policies involved in the claim contained different limits of loss liability. In deciding the question as to the amount of loss, each company should pay, the court applied this rule, but it was done in such a way that the Supreme Court of Connecticut, in commenting on the opinion, says: "* * * this doctrine receives at least implied sanction."

The next case where this rule was applied is that of Herr vs. Greenwich Insurance Company, 20 Pa. Superior Court 169, and this decision was made April 21st, 1902. There was no discussion by the court in rendering its opinion in this case, of any of the points involved, therefore the decision is valuable only as showing that the Superior Court of Pennsylvania has applied this rule and thereby approved it.

Another case where this rule was applied was that of Grollimund & Germania Fire Ins. Co., decided August 22nd, 1912, by the New York Court of Errors and Appeals.

The Connecticut Case.

The third case, and the only one where this rule has been approved, and at the same time the questions involved have been discussed by the court in its opinion, is that of Schmaelzle vs. London & Lancashire Ins. Co., decided January 7th, 1903, by the Supreme Court of Errors of Connecticut, and the opinion will be found in 53 Atlantic Reporter 841. The full opinion is given herein and it is as follows:

"The plaintiff is the owner of premises upon which stood a brewery and shed. In the brewery were machinery and stock. Upon the buildings, machinery and stock the plaintiff carried in some thirty-four companies insurance against fire aggregating $60,000 in amount. These policies were all of the standard form, and contained the following provisions: 'This company shall not be liable under this policy for a greater proportion of any loss on the described property * * * than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent companies, covering such property * * *.' Thirty-one of the policies, covering insurance for $55,000, were of the kind known as 'blanket' or 'compound' policies; that is, they insured said buildings, machinery and stock as a whole, and

without distributing the amount of the insurance among the several items. The remaining policies, containing insurance for $5,000, were of the kind known as 'specific'; that is, the amount insured hereby was distributed among the several items of property, a specific amount to each item. Each of these specific policies covered in the whole precisely the same property as did the compound insurance, but distributively. This distribution was uniform among the specific policies, and was among four separate items, to-wit, the main or brewery building, stock, machinery and shed, as follows: $1,634.88 on the brewery, $1,839.21 on the stock, $1,498.64 on the machinery, and $27.24 on the shed. A fire damaged the brewery, stock and machinery. The sound value of the property insured was $59,982, divided as follows: Brewery, $20,586; stock, $11,085; machinery, $28,111, and shed, $200. The loss by the fire was mutually adjusted at $42,953, distributed as follows: Brewery, $15,115; stock, $11,085; machinery, $16,753, and shed, 0.

"It is conceded that the assured is entitled to receive from the defendants the amount of his loss above stated. The only question in the case is one between the several defendants as to the sum which each should pay. Between the blanket insurers there is no dispute, and between the specific there is none. The contention is between the two classes of insurers, and is as to the method to be employed in the apportionment of the loss in view of the provisions as to prorating which appear alike in all the policies and which have been quoted. It is clear that the compound and the specific insurance must be brought together in prorating. This necessarily involves an adjustment by separate items, and the application in some way of the blanket insurance to each item covered by specific insurance. The question is as to how this shall be done. The claim of the blanket insurers is that their policies should, for the purpose of the distribution of the loss, be converted into specific ones; specific amounts under the policies being set out to each item upon which there is specific insurance, so that, for the purpose of determining the amount that any blanket policy shall contribute towards any item of loss upon which there is specific insurance the amount of the blanket policy's insurance upon such item and the total amount of insurance thereon shall be computed upon the basis thus ascertained. The methods suggested for making this conversion from compound

to specific are two, both of which are claimed as having the approval of authority and experience. One method is to distribute the amount of the blanket policy over the property insured by it so that the items bearing specific insurance shall be credited with insurance to such a proportionate amount of the whole as the sound value of the specific item bears to the sound value of the whole. The other is to make this conversion upon the basis of the respective losses upon the property insured. The specific insurers, upon the other hand, contend that there should be no such conversion; but that in adjusting each item of loss the total amount of insurance thereon and the amount insured by each blanket policy be determined by including the entire amount of the compound insurance which has not been previously exhausted in adjusting some other item. The widely differing results to which the two claims might lead are apparent. In making these claims and others which are incidental to them, all the parties concede that, whatever general rule of apportionment of loss may be adopted, it must, in so far as it is not directly prescribed by the contract, yield in case of need to the interests of the assured. The first requisite of any method of apportionment sought to be applied must be the assured's protection to the full extent of his rights under his policies. Any method which, in a given case, fails to afford him the full measure of his just indemnity, must give place to another which will. In the present case the plaintiff has no concern as to which of the suggested methods be adopted in distributing his loss among his insurers. The interests of the latter are alone involved. The whole question arises out of the application to the facts of the case of the provisions of the prorating clause in the policies. Each insurer has not entered into an unqualified obligation to indemnify the assured to the extent of his loss, or to the extent of his loss limited to the amount of the policy. It has made a contract which gives it, as against the assured, a benefit arising from co-insurance. It stipulates that its liability shall be limited in amount dependent upon the existence and amount of such co-insurance. The policy expressly states how its liability shall be determined. The question, therefore, becomes one of contract construction. It is not one of equitable determination in the absence of an agreement, as was the case in certain of the adjudicated cases. We are not called upon to adjust the equities be-

tween co-insurers, one having paid more than his fair share of loss. We are not dealing with the doctrine of subrogation. The parties have recorded their agreement, and we have only to determine its meaning, and enforce it.

What Amount Attached to Each Item?

"The policy provision, to restate its pertinent portion, is: 'This company shall not be liable under this policy for a greater portion of any loss of the described property * * * than the amount hereby insured shall bear to the whole insurance.' It is thus provided that the mode to be employed in determining the extent of liability is purely a mathematical one, involving the stating of a problem in simple proportion. The three known terms of the proportion, from which the fourth, to-wit, the amount of the liability under the given policy, is to be deduced, are stated to be the whole insurance, the amount insured under the policy, and the loss. The loss is in this case an ascertained sum. In any it is a determinable one. Where the given policy is a specific one, the second term is also a definite one, and only the first remains open to question. If the given policy is a blanket one, then both the first and second terms are subject to dispute. An answer to a single question, however, resolves all. That question, which thus stands out as the controlling one in the situation, is thus seen to be this: 'By the term of a blanket policy, what amount of insurance attached to each item embraced within the insurance?' The answer to this question is not a hidden one. The characteristic features of a blanket policy are well understood. Its very essence is that it covers to the full amount every item of property described in it. If the loss upon one portion or item of the property exhausts the full amount of the policy, the whole insurance must be paid. There can be no apportionment of it. In the absence of a prorating clause, one blanket insurer among many insurers, whether blanket or specific, may be sued, and he must pay the whole loss, if it is not in excess of his policy. His payment will give him certain equitable rights of contribution as against his co-insurers, but his legal obligation to pay the assured can not be questioned. The contract holds him to that. These principles are elementary. Joyce, Ins. 2492; May, Ins. (3d Ed.) 13; Ostrander, Ins. 204. It is in such particulars as these that blanket policies differ

from specifics. The difference is one which inheres in the nature of the two contracts, and has its recognition in the accepted advantages of a blanket policy to the assured and its disadvantages to the insurer, and in the more exacting terms which are customarily demanded for its issue. The answer to our question must, therefore, be that the whole amount insured by a blanket policy attaches, and invariably attaches to each item thereunder. The blanket insurers concede the peculiar character which in general inheres in such policies, but they say that for the purpose of the contributing clause they are entitled to an apportionment of their insurance in cases of adjustment in connection with specific insurers. We fail to see anything in this claim but an appeal from the contract made to assume principles of fairness and equity. It certainly does not rest upon any logical foundation. The palpable answer to it is found in the fact that the question is one of legal construction of an express contract obligation, and not of equitable determination. The parties having made a contract, the courts are powerless to change it. What the blanket insurers ask is, in effect, that there be read into their policies a provision which is not there. Had the parties wished, this provision might easily have been incorporated. It was not, and the contract must stand as made.

Specific or Blanket.

"We have thus far discussed the question at issue as one of reason and not of authority. The analogous cases are few. They are, however, to be found. Concerning them it has to be confessed that the majority which have arisen under the operation of the prorating clause have adopted the compound insurer's view. It is noticeable, also, that of these all, save a few, state the proposition as a dictum, or simply its correctness without argument or reason therefor. Such are the cases of Blake vs. Insurance Co., 12 Gray 272; Cromie vs. Insurance Co., 15 B. Mon. 432; Le Sure Lumber Co. vs. Mutual Fire Ins. Co., 101 Iowa 514, 70 N. W. 761. In Chandler vs. Insurance Co., 70 Vt. 562, 41 Atl. 502, the court attempts to give a reason for this position. It is contained in these words only: 'As by their terms the specific policies can not be converted into blanket policies, it necessarily follows that the only way in which the loss can be adjusted is to turn the blanket policies into specific ones.' This is a clear case of a

non sequitur. The syllogism involved assumes for its major premise the existence of a necessity which does not exist. It is practically as simple to adjust a loss by not apportioning as by apportioning the blanket insurance. In Ogden vs. Insurance Co., 50 N. Y. 388, Am. Rep. 492, the court finds its reason in the fact that it was unreasonable to assume that any of the parcels included in the blanket insurance were over-insured where the total insurance was not in excess of the total value. What method of adjusting this argument would have led the court to adopt had concurrent compound policies for different gross sums been involved, was not stated. An assumption of that situation sufficiently discloses the fallacy of the case. Of all these cases it is to be observed that none attempt to lay down a rule of universal, or even general application. They treat each case by itself, conceding that in the next the rule might not apply. The trouble has been that in ignoring the contract all has been left to arbitrary and uncertain action, which fairness and equity in the given cases seems to indicate. In Page vs. Insurance Co., 20 C. C. A. 397, 74 Fed. 203, 33 L. R. A. 249, the other side of this question is distinctly avowed. The decision is put squarely upon the terms of the contract. The argument, although brief, is substantially that which had guided us. The position assumed in the case last cited seemed to have the approval of Joyce in his latest work. Joyce, Ins. 3457. In Sherman vs. Insurance Co., 39 Wis. 104, also, this doctrine receives at least implied sanction.

ITEMS MUST BE TAKEN IN SOME ORDER.

"One other point remains to be considered. As the existence of the specific policies compels the adjustment of the loss by items, these items must be taken up in some order. This order might very materially affect the result, both as respects the companies and the insured, since that portion of a blanket policy which is exhausted in the settlement upon the first item no longer remains to be applied to the second item, and so on through the list. This matter of order is one upon which the policies in suit and policies ordinarily are silent. Evidently nothing remains but some arbitrary selection, in which the consideration influencing a choice should be what, on the whole, under the conditions, best satisfies the ends of fairness and justice as between

the companies, the assured being given his rightful amount of indemnity. A little study of the peculiar situations which may arise may convince one that no rule of universal application can be safely laid down. Whether one suggests the order of the greatest losses, or of the least losses, or the order of the enumeration in the special insurance, or an order to be determined by lot—two at least of which methods appear to have been used—or some other order, he will quite likely be met with an assumed situation in which his system seems to fail to fully accomplish equity and justice. Fortunately we have no need to search for a universal rule. In the present case it matters not to the assured, and little to the insurer, what order of adjustment is adopted. The order first indicated, to-wit, that of the greatest losses, is one which, as a general rule, has some considerations in its favor. In this case it works out substantial equity and justice to all concerned. We therefore select it for the purpose of this case as on the whole the best.

"The Superior Court is advised that in the adjustment of the plaintiff's loss and its apportionment among the defendant companies the items upon which there was loss be taken up in the order of the greatest losses, the whole property being divided for this purpose into items corresponding to those designated in the specific insurance; that in computing the total amount of insurance upon the first item the full amount of the blanket insurance be applied, and that the full amount of any given blanket policy be regarded as the amount of insurance upon the item under such policy; that with respect to the second and subsequent items the same rule be adopted, save that the total amount of insurance thereon be reduced by the amount of blanket insurance already exhausted in the settlement upon former items, and the amount of insurance under any given blanket policy likewise reduced by the amount thereof used in prior adjustments, and that judgment be rendered against the several defendants according to the results thus obtained. The other judges concurred."

Apportionment and Contribution in Foregoing Case.

The above opinion is very important and deserves the careful attention of any person interested in this subject, and as it will be more easily understood if the statement of insurance and loss, and the apportionment and contribution are shown in detail, I will give them, as follows:

Statement.

Specific insurance:		
On brewery	$1,634.88	Loss, $15,115.00
On stock	1,839.21	Loss, 11,085.00
On machinery	1,498.64	Loss, 16,753.00
On shed	27.27	No loss.
Compound insurance:		
On brewery, stock, machinery, shed	$55,000.00	
Totals, insurance	$60,000.00	Loss, $42,953.00

Under the rule made by the court in this case the loss on machinery must be paid first, because it is larger than that on any other item.

Apportionment and Contribution on Machinery.

Compound insurance	$55,000.00	Pays $16,308.62
Specific insurance	1,498.64	Pays 444.38
Total loss paid		$16,753.00

The compound insurance pays under this apportionment $16,308.62 on machinery, which amount deducted from $55,000, the total compound insurance, leaves $38,691.38 to contribute, with $1,634.88, the specific insurance on brewery, to pay a loss of $15,115.00, which is the second largest amount of loss.

Apportionment and Contribution on Brewery.

Compound insurance	$38,691.38	Pays $14,502.21
Specific insurance	1,634.88	Pays 612.79
Total loss paid		$15,115.00

After paying the loss on brewery the compound insurance has left $24,189.17 to contribute, with $1,839.21, the specific insurance on stock, to pay a loss of $11,085.00.

Apportionment and Contribution on Stock.

Compound insurance	$24,189.17	Pays $10,301.71
Specific insurance	1,839.21	Pays 783.29
Total loss paid		$11,085.00

The amount of the compound insurance left after paying the losses on machinery, brewery and stock is $13,887.46, which would have to contribute with $27.27 specific insurance on shed to pay a loss on the shed if it had been damaged.

The compound insurance is compelled under the application of this rule to contribute from an apportionment as follows:

On machinery	$55,000.00
On brewery	38,691.38
On stock	24,189.17
Total	$117,880.55

If there had been a loss on the shed, the compound insurance of $55,000 would have been compelled under the application of this rule to contribute from $131,768.01, which is nearly three times the amount of insurance the policies show was written, and that was paid for by the assured.

Compound Better for Assured than Specific.

We are led to believe, from the court's comments on the compound insurance, that while it is a contract that is made the same as any other agreement where an indemnity is promised, for some reason its conditions do not invite the same degree of respect and are not as binding on the contracting parties as those of the more specific policies. The blanket or compound insurance is as legal an agreement as the more specific insurance, and its liability is fixed by the terms of the contract, and the conditions are as binding on the insured as on the insurer, and these terms and conditions possess no greater force and are no more binding on the contracting parties in a policy covering one item specifically, than they are in a policy covering more than one item, as compound insurance. It is true that a compound policy is a better contract for the assured than a specific policy, but this fact does not change in the least degree the legal force and effect of a compound policy.

Under this form of policy the compound insurance may become liable for a loss on any one of the four items equal to the full amount of the compound insurance. If the property had been so situated that one fire could not have destroyed or damaged more than one item, this compound insurance would have been nearly as good as four specific policies for $55,000 each.

This is the old English rule, which was in use in England, and also Canada, about fifty-five years ago, except that it has been slightly changed since it was introduced into this country, and the change is an improvement, because it reduces the maximum con-

tributive liability of the compound insurance. There was no equity in the English rule, but when the rule was applied there was equity in its application, because each and every item specifically insured was treated the same. There is no equity in this rule, for one item which is specifically insured is given, without a particle of reason, an advantage over the other item or items covered by specific insurance.

In the year 1860, in the adjustment of a loss at Albany, N. Y., which involved some complicated questions under compound insurance, some twenty companies, interested in the adjustment, adopted the English rule, and since that time this rule in this country has been known as the Albany rule, and for a few years after this Albany adjustment some of the New York companies had the rule printed in their policies.

ALBANY RULE.

"If, at the happening of any fire, the assured shall have other insurance which includes the premises or property herein insured, provided such policy or policies shall at any time, or under any circumstances or contingency, be liable to the insured for any amount whatever, such policy or policies, as between the insured and this company, shall be considered as co-insurance and liable to contribution, anything in said policy or policies to the contrary notwithstanding."

The first section of the old Rule VI is the same as the Albany rule, but the other two sections of the rule make it more liberal to the assured.

At the time the English rule was applied on the Albany loss it was claimed in support of the rule that: "Specific policies, by the express terms thereof, have a legal and equitable right to insist and demand that, as between them and the assured, a compound or collective policy shall contribute with them on each of the parcels insured specifically by them, and that, so far as their liability is to be determined, the collective sum is to be regarded as contributing insurance on each item so covered."

This is a statement of what the adjuster who was responsible for it thought about the Albany rule, but he fails significantly to give any reasons why this rule should be used.

At the same time, it was further stated by an adjuster that: "The assured has, by a special clause

in his contract with the specific insurance, equally binding on him as on the companies, severally agreed with each of them, 'that in case of loss he shall not be entitled to demand or recover, on a policy, any greater proportion of the loss or damage sustained to the subject insured than the amount thereby insured shall bear to the whole amount insured on the whole property.' The insured has therein stipulated with the specific insurance as between him and the companies that the compound insurance shall contribute with each of them on the subject specifically insured by them; and if the amount for which the compound insurance is thus, by this contract, to contribute exceeds the amount of its policy, the loss in excess of its policy rightfully falls on the assured himself, who has, by his contract with the specific insurance, especially debarred himself from the right to recover from them, respectively, a greater proportion of the loss than the amount insured by them shall bear to the whole amount insured on the property underwritten by them."

These rules are the English and Albany rule, changed so that the compound insurance does not contribute from its full amount on more than one item that is covered by specific insurance; but in any event, if there is a loss on more than one item which is specifically insured, the compound insurance has to contribute from more than its amount. This is positively in violation of the pro rata contribution clause, which is to be found in every fire insurance policy issued to-day, and in some of the States this clause is, because the whole policy is, a statute and a law of the State.

PRO RATA CONTRIBUTION CLAUSE.

"This company shall not be liable under this policy for a greater proportion of any loss on the described property * * * than the amount hereby insured shall bear to the whole insurance * * * covering such property."

The whole insurance contemplated by this clause, as it seems plain to me, is the amount named in the policy, and that the maximum contributive liability on any policy is the amount for which it was issued and on which the premium was based. In case of compound insurance, the courts have repeatedly held that the specific insurance can not be made blanket,

therefore the compound insurance must be made specific.

This does not have to be done to determine the liability of the compound insurance, but it becomes necessary only to ascertain the amount of loss to be paid by the specific insurance.

There is no rule for the apportionment of compound insurance that has ever been used, so far as I know, that is not a violation of the pro rata contribution clause. If the compound insurance were to be made specific on the basis of the specific insurance, then the results would be entirely in harmony with the pro rata contribution clause.

The most that we can expect or wish for, in connection with this important and very troublesome question, is to have some rule, which is equitable in principle and in its application, and one that is susceptible of the most general application, giving the assured the full amount of his loss if it is equal to or exceeds the total insurance involved.

THE NEW JERSEY CASE.

In the case of Grollimund vs. Germania Fire Insurance Co., decided by the New Jersey Court of Errors and Appeals, on August 22, 1912, and reported in 83 Atlantic Reporter, 1108, the court says:

"A policy of insurance for $2,000 on 'two three story frame building tin roof, and its additions and foundation walls, while occupied as dwellings, Nos. 69 and 71 East Twlfth street, Paterson, New Jersey, and being $1,000 on each building,' is in its legal effect a specific policy of $1,000 on No. 69 East Twelfth street and $1,000 on No. 71 East Twelfth street, and is not a blanket policy on both Nos. 69 and 71.

"A policy of insurance for '$2,000 upon the three-story frame building, and its additions adjoining and communicating, including gas and water pipes, heating apparatus and all permanent fixtures, while occupied as a dwelling house and situated Nos. 69 and 71 East Twelfth street, Paterson, New Jersey,' is not a specific policy on No. 69 and No. 71, but is a blanket policy on both, and covers to its full amount of $2,000 both on No. 69 and 71.

"In distributing the loss upon two parts of a building under one roof, and each part capable of being described and insured by street numbers, between an insurance policy covering both parts for a gross sum and a policy specifically liable on each part, both of which policies grant permission to 'effect other

insurance' an provide that the liability shall not be greater 'than the amount hereby insured shall bear to the whole insurance,' the blanket policy should be regarded as insuring each part to the entire amount unappropriated when it is reached, making the adjustment part by part in the order of the greater loss, if that will work substantial equity and justice to all concerned, and deducting the sum appropriated to the part as it is adjusted and passed."

In this decision, the court makes a policy of $2,000, contribute from $3,200, and the astonishing feature in connection with this decision is, that the judges do it after stating the conditions of the pro-rata-contribution clause.

If we had a loss in this case of $2,400, on building No. 69 and $1,500 on building No. 71, the blanket insurance would contribute from $2,400, and though the assured gets only $3,800, on a loss of $3,900, the specific insurance has a salvage of $200.

This rule is so unreasonable and unjust, and so clearly in violation of the policy conditions, I am surprised when I hear of a court recognizing it as a proper one to apply, when there is non-concurrent insurance.

ARTICLE FROM FIREMAN'S FUND RECORD.

The Kinne Rule, for the apportionment of non-concurrent insurance, had been in universal use, by agreement of the insurance companies, on the Pacific Coast for many years, and the agreement for the continuation of its use has been made. At the time the new agreement was being discussed, the *Fireman's Fund Record* published an article dealing with the decision in the Connecticut case of Schmaelzle vs. London & Lancashire Insurance Co., and in this article, the Kinne Rule is applied to the apportionment problem involved in this decision. This article is so complete in the handling of this matter that I give it in full:

"At the last annual meeting of the Fire Underwriters' Association of the Pacific, a committee was appointed to solicit all managers to agree on the Kinne rule for the apportionment with contribution of loss under non-concurrent policies.

"This is the 'Finn' loss to loss rule of 'apportionment with contribution' of general insurance under non-concurrent policies as amended by Colonel Kinne.

"The Kinne amendment—the Kinne rule—provides for the re-apportionment of and contribution pro-

rata from unexhausted insurance to exhaust the same or to pay the loss in full.

"Underwriters at this day and age cut a sorry figure before the people and the courts, in having no rule to carry out their policy contracts, other than the rule of 'devil take the hindmost,' 'catch as catch can,' 'pull dog, pull devil,' 'get in first and get the advantage of the other company or of the claimant in the settlement.'

"The 'loss to loss' and 'value to value' rules of 'apportionment with contributions' of the general insurance to contribute from the sums so apportioned to items, and with the specific sums on such items, to pay the losses thereon; and the Cromie, Albany and Schmaelzle (decision) rules of 'contribution without apportionment' to contribute direct from the general insurance without first 'apportioning' same, were each adopted to fit cases at issue; but neither one of these rules will in all cases exhaust the last applicable dollar to the payment of loss.

"These rules, except the 'Albany,' are backed by different judicial decisions, but, as in each case the amount of insurance was in excess of the loss, the question of shortage on any item did not come before the court.

"The Albany rule has been abandoned.

"The Cromie rule applies to and exhausts all of the general insurance in cases where there is specific insurance on but one item.

"The Schmaelzle decision (Schmaelzle vs. Ins. Co.) applies the total of the general policy to the payment of the loss, first: 'On the first item, the full amount of the blanket (general) insurance is to be considered; on the second item such amount less its liability on the first item; and so on, the items being taken up in the order of the greatest loss.'

"The figures in that case were: Total insurance on buildings and contents, $60,000; 31 policies for $55,000 were blanket on the property, and $5,000 was specific, as follows: Brewery $1,635, loss $15,115; stock $1,839, loss $11,085; machinery $1,499, loss $16,753, and shed $27, no loss.

"The decision, without first 'apportioning' the blanket (general) insurance, contributes from blanket and specific in the order of 'machinery, largest loss,' No. 1. 'brewery,' No. 2, and 'stock,' No. 3.

Statement of Loss Under Schmaelzle Decision.

No. 1—Machinery. Loss		$16,753	
Specific insurance	$ 1,499 Pays	447	29%
General insurance contributes	55,000 Pays	16,306	
		$16,753	
No. 2—Brewery. Loss		$15,115	
Specific insurance	$ 1,635 Pays	621	37%+
General insurance contributes	38,694 Pays	14,494	
		$15,115	
No. 3—Stock. Loss		$11,085	
Specific insurance	$ 1,839 Pays	783	42%+
General insurance contributes	24,200 Pays	10,302	
		$11,085	

General insurance, $55,000, contributes on a basis of $117,874, pays $41,102—75 per cent.

The varying percentages, 29 to 42 per cent., assessed to specific insurances, and 75 per cent. to the general insurance, proves conclusively that the Schmaelzle decision is not equitable between the companies.

Had the losses been $23,000, $20,000 and $16,000, respectively, the contributions would have been:

No. 1—Machinery. Loss			$23,000
Specific insurance applies	$ 1,499	Pays..	$ 610
General insurance applies	55,000	Pays..	22,390
			$23,000
No. 2—Brewery Loss			$20,000
Specific insurance applies	$ 1,635	Pays..	$ 955
General insurance applies	32,610	Pays..	19,045
			$20,000
No. 3—Stock. Loss			$16,000
Specific insurance applies	$ 1,839	Pays..	$ 1,839
General insurance applies	13,565	Pays..	13,565
Total insurance to pay loss			$15,404

Insured short	596
	$16,000

The total loss is	$59,000
The total insurance to apply thereon is	59,973
The total payment according to Schmaelzle decision is	58,404
Insured is $586 short, with unexhausted insurance	**1,569**

A bad rule for the insured.

"This Schmaelzle decision, as a rule of law, justice or equity, as proven in these examples, fails to carry out the basic principles of insurance, which are, 'that no apportionment of loss must be made among companies which will not fully indemnify the insured to the amount of the insurance, and that no company can have a salvage at the expense of its fellow-company, or at the expense of the claimant.

" 'Apportionment with contribution' of this loss by the Kinne rule—the 'loss to loss rule with the Kinne amendment reapportioning from excess insurance to pay shortage'—would be as follows:

INSURANCE.	Apportionment and Contribution, Loss to Loss, Rule "A"		Re-apportionment and Contribution to pay shortage Kinne Rule "B"	
No. 1—Machinery.				
Loss	.....	$23,000	.....	$23,000
	Ins.	Pays	Ins.	Pays.
Specific	$ 1,499	$ 1,499	$ 1,499	$ 1,499
General Appns.	21,441	21,441	21,501	12,501
Totals	$22,940	$22,940	.....	.....
Insurance short	60	.....	.....	.....
	$23,000	.....	$23,000	$23,000
No. 2—Brewery.				
Loss	.....	$20,000	.....	$20,000
	Ins.	Pays	Ins.	Pays.
Specific	$ 1,635	$ 1,613	$ 1,635	$ 1,615
General Appns.	18,644	18,387	18,611	18,385
	$20,279	$20,000	$20,246	$20,000
Unexhausted balance	.....	279	246	.....
No. 3—Stock.				
Loss	.....	$16,000	.....	$16,000
	Ins.	Pays.	Ins.	Pays.
Specific	$ 1,839	$ 1,756	$ 1,839	$ 1,759
General Appns.	14,915	14,244	14,888	14,241
	$16,754	$16,000	$16,727	$16,000
Unexhausted balance	.....	754	727	.....

	Ins.	Pays.
Specific	$ 4,973	$ 4,873
General	55,000	54,127
Totals	$59,973	$59,000

"The 'loss to loss' rule (A) apportions to No. 1, machinery, the sum of $21,441 from the general insurance, which, with $1,499 specific insurance on that item, gives $22,940 to pay loss of $23,000, being $60 short.

"The excess insurance on items 2 and 3, also covered by the general insurance, is $279 and $754, respectively.

"The reapportionment under the 'Kinne rule' (B) of the general insurance on these items, $18,644 and $14,915, respectively, to pay the $60 shortage on No. 1, being $33 from the former and $27 from the latter, reduces such general insurance in these amounts on items 2 and 3, and the contribution to pay the losses on the items is made (B) as shown above.

"This principle of the Kinne rule, reapportioning from the excess insurance, would apply, if the shortage had been $600 or any other sum, up to $1,033, which would have exhausted all of the insurance.

"Rules of 'contribution without apportionment' do not work in all cases.

"The Schmaelzle decision (rule) speaks for itself.

"The 'Cromie rule' exhausts all of the general insurance, when required to pay the loss, but as it will not apply in cases where more than one item has specific insurance, it can not be considered as a general rule.

"The 'loss to loss' rule with the Kinne amendment —the Kinne rule—fits all kinds of cases, pays the loss or exhausts the applicable insurance, and being more equitable between the companies than any of the other rules in the books, should be agreed upon by underwriters.

"The claimant under this Kinne rule will have no cause to go into court; and the companies, by agreeing to it, will establish self-respect, save trouble, and do not forfeit any rights by such reciprocal agreement."

I do not favor the compound insurance any more than the specific. Each is a contract in writing, and each should be construed according to the language used, and to carry out the intent of the parties as expressed in the agreement. The specific insurance can not be made compound, therefore it becomes necessary, in order to fully indemnify the assured,

to apply a forced construction to the compound insurance agreement, and make it conform to the necessities of the case, to such an extent that the loss can be apportioned. While conceding this, I contend that the conditions of the compound agreement are as sacred and as obligatory on the part of the contracting parties, as are those of the specific agreement. I apprehend this will not be denied. I maintain, therefore, that the least violation of the compound agreement should be approved as becomes absolutely necessary fully to indemnify the assured, and yet not violate the conditions of the specific contracts.

PRO RATA CONTRIBUTION CLAUSE.

The compound and specific contracts each contain the *pro rata* contribution clause, and it is as follows:

"This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by and expense of removal from premises endangered by fire, than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers, covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss, may be provided for by agreement or condition written hereon or attached or appended hereto."

I ask you particularly to remember that the *pro rata* contribution clause as given in full above is in both classes of policies, and that it possesses the same legal force in one class as in the other, and that it is absolutely no more binding as a legal agreement in one class of policies than in the other.

The first point to which I wish to call your attention, in construing the insurance contract, is that all of the compound insurance for the purpose of paying losses covers on the property destroyed or damaged.

In the case of Page Bros. vs. Sun Insurance Office, 25 Ins. Law Journal 865, decided by the United States Circuit Court of Appeals, the court says:

"The result is that, under a clause in a policy of insurance which provides that the company shall not be liable for a greater portion of any loss on the property described therein than that which the amount insured thereby shall bear to the whole insurance covering such property:

"First. Compound policies insuring the property described in such a policy, and other property, cover the property so described to their full amount, in case of a loss upon the property described in the specific policy, and no loss on the other property described in the compound policies.

"Second. In such a case the company issuing the specific policy is liable for no greater proportion of the loss than that which the amount of such policy bears to the total amount of both the compound and specific policies covering the property it describes."

LE SURE LUMBER CO. CASE.

In the case of The Le Sure Lumber Co. vs. Mutual Fire Ins. Co., 70 Northwestern Reporter 761, the Supreme Court of Iowa says:

"The policy was designed to secure the plaintiff against loss by fire in any one or all of the yards to the full amount of the policy. It covered all of the property which was destroyed, and, if it is paid in full, it will not fully compensate the plaintiff for the loss sustained. In ascertaining the amount of insurance, for the purpose of an apportionment, it would be just, in the absence of a stipulation to the contrary, to consider only the insurance on the property injured or destroyed; and it will be presumed in the absence of a showing to the contrary that the parties to the contract provide for a just result. The language they use does not necessarily mean that in case of loss the defendant should only be liable for such proportion of it as the amount it insured was of the total insurance on all of the property described in its policy, whether the concurrent insurance was on all of the property or only a part of it. We think a permissible, and the correct, interpretation of the policy is that in case of a loss the defendant was not to be liable for a greater proportion of it than the amount of its policy bore to the total insurance on the proportion injured or destroyed. It is true the words 'described property,' if not modified, refer to all of the property covered by the policy, and the phrase 'covering such property' is equally comprehensive; but considered in their relation to the word 'loss,' and the purpose for which the policy was issued, we are of the opinion that they should be held to refer to property which should be injured or destroyed."

"AMOUNT INSURED" AND "TOTAL INSURANCE"

The next point for consideration, as I view this question, is as to what is meant by the words "amount insured" and "total insurance," as used in the pro rata contribution clause, as follows:

"This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by and expense of removal from premises endangered by fire, than the *amount hereby insured* shall bear to the *whole insurance*, whether valid or not, or by solvent or insolvent insurers, covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss, may be provided for by agreement or condition written hereon or attached or appended hereto."

In the case of the Farmers' Feed Company vs. Scottish Union & National Ins. Co., 65 Northwestern Reporter 1y05, decided January 13th, 1903, by the Court of Appeals of New York, the court says:

"The decision of the controversy turns on the meaning of the words 'whole insurance,' as used in the apportionment clause of the defendant's policy. It was there provided that the defendant should not be liable for a greater proportion of any loss than the amount insured by its policy shall bear to the whole insurance on the property."

"The four companies stipulated that they should 'be liable for no greater proportion' of the loss, which was $45,321.18, 'than the sum hereby insured,' or $17,500, 'bears to 80 per cent. of the cash value of the property,' which was $99,728. Their liability, therefore, is represented by the following proportion: As $99,728 is to $17,500, so is $45,321.18 to the amount required, or $7,952.84. Was this 'the whole insurance' effected by the four policies containing the co-insurance clause? If so, that clause has no effect in this case. We think it was not, for, if the loss had been greater, the amount called for by the policies would have been greater also, and yet it would not have exceeded the amount of insurance. *The largest sum, which in any event, can be collected under a policy*, and not the smaller sum which may be collected under special circumstances, is the *amount of insurance effected by the policy*. There is no limit to the possible liability under the four policies, except the amount that the companies stip-

ulate it should not exceed, aggregating $17,500, which they would have been obliged to pay if the loss had been total.

"*The amount of insurance*, therefore, *is the largest sum that the company, under any circumstances*, according to the terms of the policy, *can be required to pay*. This is the popular understanding as well as the legal definition."

Amount of Insurance the Same.

"The amount of insurance is at all times the same, but when the loss is partial the insurer stands only a part, unless the insurance is for the full percentage; whereas, if the loss is total, the insurer stands all, not exceeding the limit stated in the policy. That limit is the amount of insurance made by the policy, because the company may be required to pay to that extent. The words of the co-insurance clause, viz., 'the sum hereby insured,' indicate the amount of insurance. That sum is fixed, definite and always the same."

"For the purpose of apportionment, the face values of the policies should be resorted to, regardless of the cash value of the property, and thus the whole amount of the insurance can be ascertained by a simple inspection of the policies. The face value of a policy is not reduced by the actual value of the property, or by the duty of apportioning the loss, or by the effect of a co-insurance clause in another policy on the same property. *The amount of insurance is fixed at the inception of the policy*, but the amount of liability is not fixed until a loss has occurred. *The one depends upon the sum for which the policy is written*, but the other depends upon a number of contingencies which may or may not happen, and hence can not be known in advance. The fact that they are not known, and may never come into existence, does not affect the amount of the policy."

Two Questions in Case of Stephenson vs. Agricultural.

In the case of Isaac Stephenson et al., Executors, vs. Agricultural Ins. Co., decided by the Wisconsin Supreme Court, in January, 1903, the court says:

"This appeal calls for the solution of two questions concerning the construction of significant words in this part of Sections 1941-58, R. S. 1898:

" 'This company shall not be liable under this policy for a greater proportion of any loss on the described property * * * than the amount hereby insured shall bear to the whole insurance, whether valid or not.'

These are the questions: 1. Do the words 'amount hereby insured' refer to the face of the policy—the maximum of the risk assumed under any or all circumstances? 2. Do the words 'whole insurance' refer to the aggregate of the maximum risks assumed by all insurers in respect to the property? Affirmative answers will lead to an affirmance of the judgments.

"What has been said as to what constitutes the amount of the insurance under that part of the standard policy, as regards Sections 1941-43, R. S. 1898, applies to that part embodying Sections 1941-58 *id.* Note the plain distinction in the latter section between 'amount hereby insured,' or 'whole insurance,' and 'loss': 'This company shall not be liable under this policy for a greater proportion of any loss * * * than the amount hereby insured shall bear to the whole insurance.' To say that the terms 'liability,' 'loss,' and 'amount insured,' or 'whole insurance,' are synonymous, or that the amount of insurance is undeterminable in advance of loss, is well-nigh, if not quite absurd. The language of the section as a whole is too plain to admit of any resort to rules for judicial construction to determine its meaning. As indicated, 'loss' refers to the damages of the assured measured in money; 'liable,' or 'liability,' to the amount of such loss which the sufferer, under the insurance contract, may recover upon the policy, and 'amount hereby insured' to the risk assumed under the policy—the amount which, regardless of any loss paid, remains subject to be drawn upon from time to time to satisfy other losses till it shall have been wholly exhausted.

"The words 'amount of insurance' and 'amount insured' are used in the 80 per cent. clause in a way to clearly indicate that they refer to the maximum risk assumed, the $7,500. Here is the language: 'If, at the time of the fire, the whole amount of insurance on said property shall be less than 80 per cent., this company shall, in case of loss or damage less than said 80 per cent., be liable only for such portion thereof as the amount insured by this policy shall bear,' etc. There can be no mistaking the connection between the significant words in that clause

and the maximum risk assumed by the company and by all the companies.

MAXIMUM AMOUNT OF RISK ASSUMED.

"There is abundance of authority supporting the conclusions that 'amount hereby insured,' and similar expressions as regards a particular policy, *mean maximum amount of risk assumed;* that 'the whole insurance,' and similar expressions as to any given parcel of property covered by several policies of insurance, with or without a limitation of liability clause similar to the one in the Milwaukee Mechanics' Insurance Company policy, *mean the aggregate maximum risks assumed under all the policies.*"

It is very evident from the strong language used by the courts in these two cases, that the *amount hereby insured* when applied to the compound insurance in this case, means $55,000, and that the *whole insurance* means the total amount of insurance named in the policies, and not one cent more, which in this case, there being no loss on the shed, would be $59,972.73.

TWO IMPORTANT PROPOSITIONS.

The decisions referred to herein, which were rendered by the United States Circuit Court of Appeals, the Supreme Court of Iowa, the Supreme Court of Wisconsin, and the New York Court of Appeals, very clearly establish two propositions, and though both of them are of the utmost importance in considering the questions involved in this Connecticut case, the court ignored them entirely in the decision.

The first one of these propositions is that all of the compound insurance for the purpose of paying a claim for loss or damage, covers only on the property which is destroyed or damaged. The second is that the words *"amount hereby insured"* mean maximum amount of risk assumed, or the largest amount which in any event can be collected under a policy, and this is the amount of insurance effected by the policy. Also that the words *"whole insurance"* mean as to any parcel of property covered by insurance, the aggregate maximum risks assumed on the property, under all the policies.

In view of the above decisions, what is the liability of the compound insurance involved in the Connecticut opinion? The statement shows that there

was no loss on the shed, which was specifically insured for $27.27, and this therefore leaves $4,972.73 specific insurance, covering on brewery, stock and machinery, to contribute with $55,000 compound insurance to pay a $42,953 loss.

Apportionment and Contribution on Brewery, Stock and Machinery.

Compound insurance	$55,000.00	Pays $39,391.48
Specific insurance	4,972.73	Pays 3,561.52
Total insurance of....	$59,972.73	Pays $42,953.00

Under the strict legal construction of the compound agreement, we find that this class of insurance pays $39,391.48 loss.

We find when comparing the last apportionment with them, made under the ruling of the court in the Connecticut case, that under the last apportionment the compound insurance pays $39,391.48, which is 5,500.000/5,997,273 of $42,973, the total loss. That under the first apportionments the compound insurance paid $41,112.54 loss, or $1,721.06 more than under the last. I contend that there is no legal or equitable reason why the compound insurance should be slaughtered in this way, and made to pay nearly 50 per cent. of the loss which should be paid by the specific insurance. The legal liability of the compound insurance is $39,391.48, and that rule which will produce approximately this result and let the specific insurance contribute from the specific amounts, and which is susceptible to the most general application, is in my judgment the one the companies should adopt and the courts apply.

To say, as the court does in this Connecticut decision, that a total insurance of $55,000 covers at one and the same time $55,000 on machinery, $38,691.38 on brewery, $24,189.17 on stock, and $13,887.46 on shed, is as unreasonable and impossible as it would be to say that fifty-five gallons of water could be made to fill at one and the same time four tanks, one of fifty-five gallons, one of thirty-nine gallons, one of twenty-five gallons and one of fourteen gallons. It strikes me that the contention which is made in support of this rule is not only unreasonable and inconsistent, but illegal. This is certainly reading conditions into the contracts which are not there, and were not intended by either party when the contracts were made, to be forced into them and made a part thereof.

Compound Does Not Cover in Full Where There Is Specific.

The United States Circuit Court of Appeals, in the case of Page Bros. vs. Sun Insurance Office, 25 Ins. Law Journal 865, says: "Compound policies insuring the property described in such a policy, and other property, cover the property so described to their full amount, *in case of a loss upon the property described in the specific policy and no less on the other property described in the compound policies.*"

From the language used in the decision in the Page Bros. case, it is clearly evident that the court would hold that the $55,000 compound insurance would not cover for its full amount on machinery, or any one of the three items on which there was a loss, but that the $55,000 compound insurance would cover on all of the three items on which there was a loss. In other words, if I correctly understand this decision, the court decides that if the compound insurance covers property which is specifically insured, and the loss is on property which is specifically insured, and on other property which is covered by the compound insurance, then the compound insurance does not cover for its full amount on the property specifically insured. If the loss in the Connecticut case had been only on machinery, then all of the $55,000 compound insurance would have covered for the purpose of paying the loss on machinery, but as there were losses on brewery and stock, only a part of the $55,000 compound insurance covered on machinery, and not the whole of it, as decided by the court.

In 1854 an effort was made to have the rule used by the Connecticut court applied to a case in Kentucky. This rule, with others, was considered by the court, and, though the attorney made a strong argument for the rule, the court declined to adopt it. This was the case of Cromie vs. Kentucky & Louisville Mutual Ins. Co., 15 B. Monroe (Ky.) 432. The attorney for the insurance company said:

"The Kentucky & Louisville Mutual Insurance Company issued a policy on Cromie's paper mill for $5,000. An addition to the mill was subsequently built and both buildings were insured together in other offices for $7,000 besides, maging the total sum insured $12,000. Both buildings were damaged by fire, and this company has paid five-twelfths of the loss on the old building. The question presented

and decided below was as to the mode of adjusting the loss, and by agreement the same question is presented here.

"If the new building alone had burned, this insurance company would not have been bound for any part of the loss, because that building was not embraced in her policy. If the old building alone had burned, she would have been liable for only five-twelfths of the loss not exceeding the sum by her insured. Now, when both buildings burn, if a rule of adjustment is fixed whereby this company pays more than if the old building alone had burned, to that extent she is made to pay for the loss on the new building, which is not embraced in her policy.

"The other underwriters can not justly complain of the mode of adjustment proposed above. As to them the risk is a unit. Their policies embrace both buildings as a whole, and they have no more right to apportion their risk on the constituent parts of the building insured than upon its rooms or stories. Let the loss fall upon what part or parcel it may, they must make good their contract with Cromie. True, their pro rata might be larger if only the portion not embraced in this policy should burn than if the other alone burned, for in the first case the contribution would be by sevenths, and in the last by twelfths; but this results from their contract, and truly this insurance company is not an underwriter for them."

In the case of Angelrodt & Barth vs. Delaware Mutual Ins. Co., 31 Mo. 593, decided in 1862, the same rule was considered. The policy of one company covered on merchandise, and the other policy covered on merchandise, their own and held on storage. There was a loss on their own merchandise and also on the merchandise held on storage. The court was asked to make the compound policy contribute from its full amount, with the specific insurance on merchandise to pay the loss on merchandise. The court refused to apply the rule, and applied what is known as the Cromie rule.

In 1872 the Supreme Court of the State of New York, in the case of Ogden vs. Insurance Co., 50 N. Y. 388, considered this rule, and the court said: "Where several parcels of property are insured together for an entire sum, it is impossible to say as to either of the parcels that there is no insurance upon it."

The court also said in this case: "Neither can we agree to the doctrine contended for by the counsel for the appellant, that the whole sum insured by the more comprehensive policy is to be considered as so much additional insurance upon the parcels separately insured."

In the Connecticut case there is $1,498.64 specific insurance covering on the machinery with a loss of $16,753, and here we are confronted with one question that is difficult to solve, and that is, what is the "*whole insurance*" covering on the machinery? It can not be $55,000, for that in this case is the total compound insurance covering on machinery, brewery and stock. We can not make the specific insurance compound insurance, and therefore here is where we must to a certain extent violate the conditions of the compound insurance, and arbitrarily determine what part of this $55,000 compound insurance covers on the machinery. I advocate applying a rule which, in its application, violates to the least extent the terms and conditions of the compound insurance, and which is susceptible of the most general application in this class of propositions.

A DISCRIMINATION.

I contend that it is less a violation of the compound insurance contract to make it specific on the basis of the loss than it is to do as the court has done in this Connecticut case, and say that $55,000 insurance should be made to contribute from $131,768.01, and that one of four items covered by specific insurance is entitled to an advantage, such as is given over the other items. There is not a word in the policy which even gives an intimation that $55,000 compound insurance should be made to contribute from $131,768.01, but the wording of the pro rata contribution clause shows that the "*amount hereby insured*" in this case means $55,000. There is not a word in the policy which shows that the specific insurance on machinery is entitled to any advantages over the specific insurance on brewery or stock. If the specific insurance on machinery is entitled to have the compound insurance contribute from $55,000, then the specific insurance on brewery and stock is entitled to the same consideration and treatment.

In this Connecticut case the blanket insurers asked to have the compound insurance made specific on the basis of the loss or sound value. In answering this question, the court says: "What the blanket insur-

ers ask is, in effect, that there be read into their policies a provision which is not there. Had the parties wished, this proposition might easily have been incorporated. It was not, and the contract must stand as made." It is conceded by me that the policies do not provide for making the compound insurance specific on the basis of loss or sound value. It is at the same time contended by me that the policies do not provide for making $55,000 compound insurance contribute from $131,768.01, and furthermore they do not provide that one item specifically insured should have such an advantage over another item similarly insured, as the court gave in this case to the specific insurance on machinery, over the specific insurance on brewery and stock, and to the specific insurance on machinery and brewery over the specific insurance on stock.

COMPOUND SPECIFIC ON BASIS OF LOSSES.

If we apply the rule which makes the compound insurance specific on the basis of the losses, we have 15.115/42,953 of $5,000, or $19,354.30 covering on brewery; 11,085/42,953 of $55,000, or $14,194.00 covering on stock, and 16,753/42,953 of $55,000, or $21,451.70 covering on machinery.

Apportionment and Contribution on Brewery.

Compound insurance	$19,354.30	Pays $13,937.67
Specific insurance	1,634.88	Pays 1,177.33
Total insurance of....	$20,989.18	Pays $15,115.00

Apportionment and Contribution on Stock.

Compound insurance	$14,194.00	Pays $9,813.41
Specific insurance	1,839.21	Pays 1,271.59
Total insurance of....	$16,033.21	Pays $11,085.00

Apportionment and Contribution on Machinery.

Compound insurance	$21,451.70	Pays $15,659.04
Specific insurance	1,498.64	Pays 1,093.96
Total insurance of....	$22,950.34	Pays $16,753.00

The compound insurance insures and pays under the above apportionments as follows:

On brewery, insurance....	$19,354.30	Pays $13,937.67
On stock, insurance.....	14,194.00	Pays 9,813.41
On machinery, insurance..	21,451.70	Pays 15,659.04
Total insurance of....	$55,000.00	Pays $39,410.12

We have found that the liability of the compound insurance under the pro rata contribution clause, which fixes its limit of liability at such a part of the loss as the amount insured bears to the whole insurance to be 5,500,000/5,997,273 of $42,953.00, or $39,391.48. Under the application of the rule making the compound insurance specific on the basis of the losses, we make it pay $39,410.12, which is $18.64 more than its actual legal liability, as shown by the statement made in detail herein.

A QUESTION OF REASON AND NOT OF AUTHORITY.

In the Connecticut case the court admits that a majority of the decisions are against the rule which it applies, and on this subject it says: "We have thus far discussed the question at issue as one of reason, and not of authority. The analogous cases are few. They are, however, to be found. Concerning them it has to be confessed that the majority which have arisen under the operation of the pro rating clause have adopted the compound insurers' view. It is noticeable, also, that of these all save a few state the proposition as a dictum, or simply its correctness without argument or reason therefor."

The court furthermore says: "It is practically as simple to adjust a loss by not apportioning as by apportioning the blanket insurance." If the court had been able to prove the truth of this statement and had proven that it could be done without violating the contracts, the opinion would have been very valuable to the insurance fraternity. It can not be denied that the court succeeded in determining the liability of the companies interested in this case without an apportionment, but it has to be admitted, because it is true, that the court, in order to do so, grossly violated two well-known conditions of the contracts.

In order to show what could happen, in the application of this rule, I will apply it to an assumed case.

Statement of Loss.

Insurance:

Ætna, on wheat	$10,000	Loss	$18,000
Continental, on corn	10,000	Loss	17,991
Home, on grain	20,000	Loss	.....
Total insurance	$40,000	Loss	$35,991

In this assumed case, we have the largest amount of loss on wheat, which is specifically insured under the Ætna policy for $10,000, and under the application of this rule we have $20,000 compound insurance by the Home, which is to contribute with it, to pay the loss of $18,000.

Apportionment and Contribution on Wheat.

Compound insurance	$20,000	Pays $12,000
Specific insurance	10,000	Pays 6,000
Total insurance of	$30,000	Pays $18,000

The compound insurance of $20,000 has paid $12,000 on wheat, which leaves $8,000 to contribute with the $10,000 specific insurance in the Continental to pay the $17,991 loss on corn.

Apportionment and Contribution on Corn.

Compound insurance	$8,000	Pays $7,996
Specific insurance	10,000	Pays 9,995
Total insurance	$18,000	Pays $17,991

The Ætna and Continental each have a policy for $10,000, and each is entitled to the same treatment so far as the compound insurance is concerned; yet this rule makes the Ætna pay $6,000 loss, under its $10,000 on wheat, when the total loss on wheat is $18,000, and the Continental, under its $10,000 on corn, pays $9,995 when the total loss on corn is $17,991, or $9.00 less than the loss on wheat. The question as to whether or not the Continental would approve of this apportionment, which makes it pay $3,995 more loss than the Ætna pays, is not even debatable. It is a certainty that the Continental, or any other company placed in the same position, would repudiate such an unreasonable and inconsistent adjustment.

In the case of Cromie vs. Kentucky & Louisville Insurance Company, 15 B. Monroe (Ky.) 432, in the lower court, the adjustment was made by making the compound insurance contribute from its full amount with the specific insurance, same as is done when applying the Chicago and Hartford rules.

The attorneys for the insurance company stated its case as follows:

"The Kentucky & Louisville Mutual Insurance Company issued a policy on Cromie's paper mill for $5,000. An addition to the mill was subsequently built,

and both buildings were insured together in other offices for $7,000 besides, making the total sum insured $12,000. Both buildings were damaged by fire, and this company has paid five-twelfths of the loss on the old building. The question presented and decided below was as to the mode of adjusting the loss, and by agreement the same question is presented here."

The attorneys for the assured argued that the loss should be adjusted as follows:

"The other insurers insist that the following is the true mode of adjustment: Deduct the loss on the new buildings from the sum by them insured, and then compute the loss on the old building as if the balance left was the sum by them insured on the old building.

"And although we decline to determine in the present suit the proportion for which each of the companies is liable for the loss on the original building, which alone was insured by the defendants, while the other companies insured also the addition, we are of opinion that even if the plaintiff's recovery in this case should be restricted to the proportionate liability of the defendants on their policy, he has shown a right to recover from them more than five-twelfths of the amount of their policy, which is as much as they have paid; and which would be the extent of their proportional liability if the original building alone were insured by all the policies, amounting in the aggregate to $12,000, without taking into consideration the loss falling upon the other insurers, on account of the additional building covered by their policies, and which has suffered detriment by fire to the amount of more than $1,100, which they must pay. *The amount of this loss, at least, should be deducted from their policies before their aggregate amount is brought into the calculation by which the proportional liability of each is to be ascertained.*"

This class of claims is of so much importance, requires our consideration so frequently, is the cause of so many contentions and so much discussion between the adjusters, and costs the assureds and the companies so much money for legal contests, that it seems to me the leading companies ought to agree to use a rule which is based on a principle of equity—which will maintain a proper ratio of proportion in the apportionment of the compound insurance—which will give the assured the full benefit of his insurance, in accordance with the contract, as it has been construed by the courts, which is susceptible of the most

general application, and which is not in conflict with the pro rata contribution clause of the policy.

The rule which I use and which I am in favor of applying is not new. It was recommended by Jeremiah Griswold in his book entitled, "Fire Underwriters' Text-Book," which was published in 1872.

THE GRISWOLD RULE.

"Compound policies become specific and cover the several subjects under their protection in the exact proportions of the respective losses thereon."

This rule is the basis, and it contains the principle which is the foundation for the rules necessary to be used to make the basis rule applicable to the various cases.

While the basis rule given by Mr. Griswold seems restricted to a single apportionment, and that a re-apportionment was not contemplated, he demonstrated that he recognized there were conditions which might exist when one or more re-apportionments would be necessary.

In cases where the compound insurance covers items of property not protected by any of the specific insurance, the courts have made a rule which is easily applied, and which avoids some of the problems that might be involved if the Griswold rule, as given below, were applied. The rule was made in the case of Cromie vs. Kentucky & Louisville Insurance Company, 15 B. Monroe (Ky.) 432. Mr. Griswold recognized the rule applied in this case, and advocated its use.

The principle which is the basis for the Griswold Rule has been recognized by the courts in the following cases:

Cromie vs. Kentucky & Louisville Mutual Insurance Company, 15 B. Monroe (Ky.) 432.

Mayer vs. American Insurance Company, 18 Ins. Law Jaurnal, 156.

Angelrodt & Barth vs. Delaware Mutual Insurance Company, 31 Mo. 593.

Page Bros. vs. Sun Fire Office, 25 Ins. Law Journal 865.

Le Sure Lumber Co. vs. Mutual Fire Insurance Company, 7 N. W. Rep. 761.

In the case of Mayer vs. American Insurance Company, the court uses the word "value" instead of the word "loss," and unless the decision is carefully examined you would be led to believe that the Reading Rule had been applied.

THE KINNIE RULE.

Since 1885 this rule has been in general use on the Pacific Coast, and is known as the Kinnie Rule. The principle of the rule is so clearly stated, and the rules necessary to give it full effect and make it generally applicable are so complete, I deem it advisable to give you a copy of it.

The Principle.

"The principle governing all apportionments of non-concurrent policies is, that general and specific insurance must be regarded as co-insurances; and general insurance must float over and contribute to loss on all subjects under its protection, in the proportions of the respective losses thereon, until the assured is indemnified, or the policy exhausted.

Steps to Be Taken.

"The correct method of applying the principle has been formulated in the following:

"First. Ascertain the non-concurrence of the various policies and classify the various items covered into as many groups as the non-concurrence demands, whether of property, location or ownership.

"Second. Ascertain the loss on such groups of items separately.

"Third. If but a single group is found with a loss upon it, the amounts of all policies covering the group contribute pro rata.

"Fourth. If more than one group has sustained a loss, and such loss on one or more groups be equal to or greater than the total of general and specific insurance thereon, then let the whole amounts of such insurance apply to the payment of loss on such groups.

Apportionment.

"Fifth. If more than one group has sustained a loss, and such loss be less than the totals of unexhausted general and specific insurance thereon, then apportion the amount of each policy covering on such groups generally, to cover specifically on such groups in the same proportion that the sum of the losses on such groups bears to the loss on each individual group. (See Note.)

"Note.—When a group is covered by one or more general policies, it would be well to see at once if an apportionment as above on that group would equal the loss, as, in case it will not, it will show

without further calculation that the whole amount of loss on such group must be met by such policies pro rata, and the remainder only apportioned. In such cases, carrying out Step 6 simply accomplishes by a longer process what here is indicated.

Re-Apportionment.

"Sixth. If the loss on any group or groups is then found to be greater than the sum of the now specific insurance as apportioned, add sufficient to such specific insurances to make up the loss on the group, taking the amount of the deficiency from the now specific insurances of the heretofore general amounts previously covering the new deficient groups, which cover on groups having an excess of insurance, in the proportion that their sums bear to the individual amounts.

"Note.—Very rarely are new deficiencies created by the re-apportionment, but if so, simply repeat Step 6.

"Seventh. Cause the amounts of all the now specific insurances to severally contribute pro rata to pay the partial losses, and it will be found that the whole scheme has resulted in the claimant being fully indemnified in accordance with the various contracts and on a basis which preserves the equities between the companies throughout.

"To simplify matters the following formula is given in order that time may be saved, when no analysis of the principle is desired or argument needed.

Apportionment.

"General policies covering on more than one group should be divided into specific sums as follows:

Formula. (See Step 5.)

"1—As.....the sum of the losses on such groups,
"2—Is to.....the individual loss on each of them,
"3—So is.....the whole amount of policy so covering,
"4—To.....the specific amount to apply on each group.

Method of Computation.

"Divide No. 3 by No. 1 to get per cent., and then multiply by No. 2 (seriatim) to get No. 4.

Re-Apportionment.

"Should there not be enough insurance on a group or groups to pay the loss, and some groups have

more than enough, a second re-apportionment is necessary, though ordinarily but one is needed.

Formula. (See Step 6.)

"1—As.....the sum of specific insurance (with surplus),
"2—Is to.....the individual amount of each of them,
"3—So is.....the sum to be provided,
"4—To.....the amount each group will contribute.

Method of Computation.

"Divide No. 3 by No. 1 to get per cent., and then multiply by No. 2 (seriatim) to get No. 4.

"Repeat Step 6 when necessary.

"The deficient groups can now be fortified by the exact amounts needed to pay the losses, and the problem is at once narrowed down to an ordinary mathematical one.

Contribution.

"All groups have now specific insurance on them, and will pay the losses pro rata, whereby absolute indemnity to the assured, and equitable contributions by the companies are attained on the proper and unchanging principle of loss to loss."

It is first necessary to separate the property destroyed or damaged into as many groups as the non-concurrency of the various policies demands. The non-concurrency may be because of different classes of property being covered by the insurance, or the property may be in different locations, or there may be different interests. It then becomes necessary to ascertain the amount of loss on each item of property destroyed or damaged which is now the subject of specific insurance.

I will make the apportionment and contribution in a case where the compound insurance covers items not protected by the specific insurance. In the first statement I will make the compound insurance specific on the basis of the loss. I will then make the apportionment as provided by the rule made by the court in the Cromie case.

Statement.

Continental—On Corn ....$2,500; loss on corn, $4,000
Ætna—On Corn and Oats.. 7,500; loss on oats, 1,000

If we make the compound policy issued by the Ætna specific on the basis of loss, we have four-fifths covering on corn and one-fifth covering on oats.

Apportionment and Contribution on Corn.

Continental insures	$2,500	Pays $1,176.47
Ætna insures	6,000	Pays 2,823.53
Total loss paid		$4,000.00

Apportionment and Contribution on Oats.

Ætna insures	$1,500	Pays $1,000.00
Total loss paid		$1,000.00
Ætna pays on Corn		$2,823.53
Ætna pays on Oats		$1,000.00
Total loss paid		$3,823.53
Continental pays		$1,176.47
Ætna pays		$3,823.53
Total loss paid		$5,000.00

In the case of Cromie vs. The Kentucky & Louisville Mutual Insurance Company, 15 B. Monroe (Ky.), 432, the court made a rule for this class of cases, and it has been and is being generally used.

THE CROMIE RULE.

When the compound insurance covers property which is not covered by the specific insurance, a portion of the compound insurance, equal to the amount of loss on this property, must be set aside to pay this loss. The remainder of the compound insurance contributes with the specific to pay the loss on the property covered by the specific insurance. If the loss on the property covered only by the compound insurance is equal to or greater than the compound insurance, this insurance will be exhausted and there will be nothing to contribute from, to help out the specific insurance.

If we apply this rule to this case we get different results, but only to the amounts the companies pay. The assured receives the full loss. The Cromie Rule, applied, results as follows:

Apportionment and Contribution on Oats.

Ætna insures	$1,000	Pays $1,000.00
Total loss paid		$1,000.00

Apportionment and Contribution on Corn.

Continental insures	$2,500	Pays $1,111.11
Aetna insures	6,500	Pays 2,888.89
Total loss paid		$4,000.00
Ætna pays on Oats		$1,000.00
Ætna pays on Corn		2,888.89
Total loss paid		$3,888.89
Continental pays		$1,111.11
Ætna pays		3,888.89
Total loss paid		$5,000.00

The application of the Cromie Rule makes the Ætna pay $65.36 more, and the Continental pays $65.36 less than was the result of the application of the first rule.

This rule, which I call the Cromie Rule, and which is the last one applied, is so generally used and has been approved by the courts in so many cases, it is safe to insist on its application.

This Cromie case is of so much importance when considering the apportionment of compound insurance, I will give you a copy of the full decision. You will readily understand when reading the case that the policies issued when the one involved in this suit was, did not contain the pro rata contribution clause.

THE CROMIE CASE.

Statement.

"1. The insured, where there are several policies covering the same property, is entitled to but one indemnity, which he may recover from anyone, and those who pay must seek contribution from other insurance. (1 Phill. on Ins., ed. of 1823, p. 326; 2 Ib. 224, 387, 496.)

"2. If there be a double insurance, and part be recovered on one policy, the remaining loss may be recovered on another.

"The facts of the case are stated in the opinion of the court.

Statement of Attorneys for Appellee.

"The Kentucky & Louisville Mutual Insurance Company issued a policy on Cromie's paper mill for $5,000. An addition to the mill was subsequently built, and both buildings were insured together in

other offices for $7,000 besides, making the total sum insured $12,000. Both buildings were damaged by fire, and this company has paid five-twelfths of the loss on the old building. The question presented and decided below was as to the mode of adjusting the loss, and by agreement the same question is presented here. (See Record 8.)

"If the new building alone had burned, this insurance company would not have been bound for any part of the loss, because that building was not embraced in her policy. If the old building alone had burned she would have been liable for only five-twelfths of the loss, not exceeding the sum by her insured. Now when both buildings burn, if a rule of adjustment is fixed whereby this company pays more than if the old building alone had burned, to that extent she is made to pay for the loss on the new building which is not embraced in her policy.

"The other underwriters can not justly complain of the mode of adjustment proposed above. As to them, the risk is a unit. Their policies embrace both buildings as a whole, and they have no more right to apportion their risk on the constituent parts of the building insured than upon its rooms or stories. Let the loss fall upon what part or parcel it may, they must make good their contract with Cromie. True, their pro rata might be larger, if the other alone burned, for in the first case the contribution would be by sevenths, and in the last by twelfths; but this results from *their* contract, and truly this insurance company is not an underwriter for *them*.

Statement of Attorneys for Appellant.

"The other insurers insist that the following is the true mode of adjustment: Deduct the loss on the new building from the sum by them insured, and then compute the loss on the old building as if the balance left was the sum by them insured on the old building. The objection to this mode is, as has been shown, that the sum to be paid by this insurance company is made to depend not only on the burning of the new building, but on the extent of that loss, although her policy does not cover the new building.

"Either mode is just to Cromie, for by either his loss is made good to the extent of the sum insured. The struggle is to make one insurer pay a part of the loss due from another, by such an adjustment as will compel him to respond to a loss where he has not assumed a risk.

"The case of Liscom vs. Boston Mutual Fire Insurance Company, 9 Met. 205, seems to favor our position, and Howard Insurance Company vs. Scribner, 5 Hill, 208, is claimed to be even stronger for Cromie.

"In this last case there was an insurance in the Aetna Company on fixtures and stock togehter for $5,000, and another in the Howard Company for $1,000 on fixtures and $3,000 on stock. The Howard policy contained the usual clause of proportionate liability in the case of other insurance. *Held*, That the assured was entitled to recover the whole amount of the latter policy without reference to the first. This decision is pointedly condemned by Phillips, 1 Treat. on Law of Ins. (3d ed.) 204, and seems to the writer to be a plain violation of common sense. If the fixtures alone had been destroyed, the Howard Insurance Company would have been liable for one-sixth only, and if the stock alone had been destroyed, she would have been liable for three-eighths only. Now, if these sums do not make up that for which she is liable when fixtures and stock are both destroyed, the whole is greater than its parts taken together. As to any hardships thus resulting to the assured, Phillips justly remarks that it is to be ascribed to his own folly, and he must bear the inconvenience; for, having agreed to a stipulation in the policy against double insurance, introduced for the benefit of both parties to that policy, it would be a violation of all principle that he should be permitted to defeat its operation in favor of the insurer, by the form of his contract with a third party. (1b.)

"Without being apprised, so far as we know, of the decision in this case, Judge Pirtle, on the authority of Howard Insurance Company vs. Scribner, recently decided against our view of the law in this case; but he gave no reason, and it is very certain that this mere opinion is not entitled to more weight than Judge Bullock's and Phillips'. Phillips was not cited to him.

"We ask an affirmance.

Decision.

"Chief Justice Marshall delivered the opinion of the Court: This petition alleges that on the 26th day of May, 1851, Cromie, the plaintiff, took insurance from the defendants in the sum of $5,000, to continue six years upon his building, known as the Louisville Paper Mill, after having previously in-

sured $2,000 on the same building in the Howard Insurance Company of New York, and $1,000 in the Ætna Insurance Company of Hartford, Conn., as shown by entries made by defendants before their policy was delivered. That afterwards, in the year 1852, he erected an addition to said building, estimated at $4,000, and being desirous to increase the insurance to about $12,000 on the old building and the addition, he obtained insurance from the Protection Insurance Company to the amount of $2,000, on both the old and new building, and from the Columbia Insurance Company of Charleston for $2,000, covering the old and new building, and the Howard and Ætna companies extended their policies so as to cover the old as well as the new building. Of all which, the defendants, as he avers, were duly informed and consented thereto, and agreed that their policy should not be vitiated thereby, as appears by entries and indorsement on the same, made by them. And that the entries as to the insurances by the Protection and the Commercial Insurance Companies were made by defendants in November or December, 1852, after they had notice of the insurance in said companies, as above. The plaintiff further alleges that on December 26, 1862, the building, insured by defendants, and also said addition, were burned; that he sustained loss on the former of at least $8,377.63, and on the latter of at least $1,122.37; that he notified said defendants of the loss on December 28, 1852, and that they did not determine to rebuild—under their privilege of doing so—nor paid said $5,000, but have only paid $3,490.67, and refuse to pay more. Wherefore, he asks for judgment for such part of said $5,000 as he may be entitled to, etc., and other proper relief.

"(1.) The policy executed by the defendants is referred to as filed with the petition, and makes a part of the record before us. It accords with the statement of it in the petition, except that the reference to the other policies does not state that they include the addition, or anything not covered by the policy of the defendant. But the petition states that the defendants were duly notified of the facts stated with respect to the other policies, and that they themselves made entry thereof upon their own policies, and it may be assumed that they were notified that the other policies covered the addition as well as the original building. The policy executed by the defendants contains, however, no stipulation for the apportion-

ment of loss with the other insurers, or for any abatement on account of prior or other policies. And, as it seems to be the rule that where there is no such stipulation, the insured, though entitled to but one satisfaction, may recover judgment against either set of insurers to the extent of the loss so far as covered by their policy, leaving them to claim contribution from the other insurers, it is immaterial to the result of the present action, and is only material as between the different insurers, or in a subsequent action against others, whether all the policies cover precisely the same property, or if they do not, what ratable portion of loss should follow each in case of the destruction of that property which is insured by all.

"(2.) The rule above stated is laid down by Phillips in his work on insurance (Vol. 1, p. 326, od. of 1823) as follows: 'But if the subsequent policy contain no provision in respect to prior insurance, the amount of insurable interest for such policy will be the same as for the first, for the insured may insure again and again, the same property if he will pay the premiums. But he can recover only one indemnity; this he may recover against the first or subsequent underwriters, and those who pay the loss may demand a proportionable contribution from other insurers.' The doctrine is again referred to in Vol. 2, p. 224; and pp. 387 and 496. It is explicity stated that in case of double insurance the assured may recover, against any one set of underwriters, the whole amount insured by them, not exceeding that of the loss, and that either one who pays more than his proportion of the loss may recover a ratable reimbursement from the others. And on the page last cited, it is said again that in case of double insurance the assured may recover against either set of underwriters the whole amount insured by them. But if a part has been recovered against one set, only the excess can be recovered against the others. And in Ellis on Insurance, side pp. 13-14, as published in Vol. 4 of the Law Library, it is said that, 'even without a special condition of the policy, a party insured, effecting a double insurance, can only recover the real amount of his loss, and if he sues one insurer for the whole, the insurer may compel the others to contribute their proportional parts;' evidently implying that he may recover the whole from the one whom he sues.

"Under this rule, as laid down by these authors,

for which reference is made to various adjudged cases cited by them, and which is entirely analogous to the principle commonly applied at law to cases in which several persons are bound in different instruments for the performance of the same thing, we are of opinion that the plaintiff in this case has the right to a judgment against the defendants for the whole amount of loss covered by their policy, leaving them to settle with the other companies the proportions of the loss which ought to be borne by each, unless in the present case the plaintiff is willing and intends to limit his recovery to the sum for which the defendants, as between themselves and the other companies, would ultimately be liable as their proportion of the loss; of which there is certainly no decisive or sufficient indication in the petition. It follows, from the view we have taken of the rights of the plaintiff in this action, that the petition shows a right of action and of recovery for the difference between the sum paid by the defendants and the entire amount of five thousand dollars, which they insured on the original building. And, although we decline to determine in the present suit the proportions for which each of the companies is liable for the loss on the original building, which alone was insured by the defendants, while the other companies insured also the addition, we are of opinion that even if the plaintiff's recovery in this case should be restricted to the proportionate liability of the defendants on their policy, he has shown a right to recover from them more than five-twelfths of the amount of their policy, which is as much as they have paid; and which would be the extent of the proportional liability if the original building alone were insured by all the policies, amounting in the aggregate to $12,000, without taking into consideration the loss falling upon the other insurers, on account of the additional building covered by their policies, and which has suffered detriment by fire to the amount of more than $1,100, which they must pay. The amount of this loss, at least, should be deducted from their policies before their aggregate amount is brought into the calculation by which the proportional liability of each is to be ascertained. Whether there should not be a greater deduction on account of their continuing liability for loss which may yet occur on the additional building covered by their policies, we need not, and do not decide, nor indeed have we the necessary data for such a decision.

"But as in any view of the case, the petition shows a right of action and of recovery to the extent, it should have been adjudged good on demurrer, and the court erred in sustaining the demurrer and rendering judgment against the plaintiff.

"Wherefore, the judgment is reversed and the cause remanded, with directions to overrule the demurrer, and for further proceedings."

I will now take up the case you have submitted, and apportion the compound insurance according to the Griswold Rule.

Statement.

Continental—On wheat, $2,500; loss, $3,000.
Continental—On corn, $3,000; loss, $4,000.
Continental—On oats, $2,000; loss, $8,000.
Aetna—On grain, $5,000.
Home—On grain, $6,000.

The Aetna and Home policies, being the compound insurance, are to be made specific on the basis of the losses. Three-fifteenths of each covers on wheat; four-fifteenths of each covers on corn, and eight-fifteenths of each covers on oats.

Apportionment on Wheat.

Continental insures	$2,500
Aetna insures	1,000
Home insures	1,200
Total insurance	$4,700
Loss	$3,000

Apportionment on Corn.

Continental insures	$3,000
Aetna insures	1,333
Home insures	1,600
Total insurance	$5,933
Loss	$4,000

Apportionment on Oats.

Continental insures	$2,000
Aetna insures	2,667
Home insures	3,200
Total insurance	$7,867
Loss	$8,000

Under this apportionment on oats we get an insurance of $7,867, with a loss on oats of $8,000. This

apportionment will pay the losses in full on wheat and corn, and give the companies a salvage of $3,633, and the assured loses $133 on the oats. This necessitates a re-apportionment. The insurance exceeds the loss by $3,500, and therefore the loss must be paid in full.

It does not very often happen in the regular work that we have to resort to a re-apportionment.

We must now take from the former compound, but now specific insurance, covering wheat and corn, $133, and add it to the former compound, but now specific, insurance on oats.

From Apportionment on Wheat.

Aetna insures	$1,000	
Home insures	1,200	
Total	$2,200	$2,200

From Apportionment on Corn.

Aetna insures	$1,333	
Home insures	1,600	
Total	$2,933	$2,933
Total		$5,133

The total former compound, but now specific, insurance on wheat and corn is $5,133.

2,220/5,133 of $133, or $57 must be taken from the former compound, but now specific, insurance on wheat, and 2,933/5,133 of $133, or $76, has to be taken from the same class of insurance on corn.

The $57 which we take from the Aetna and Home insurances on wheat and add to the same companies' insurances on oats is 1,000/2,200 of $57, or $25.91, from the Aetna, and 1,200/2,200 of $57, or $31.09, from the Home.

1,333/2,933 of the $76 on corn, or $34.54, of the Aetna insurance, and 1,600/2,933 of the $76, or $41.46, of the Home insurance on corn is to be taken from the insurance of these companies and added to the same companies' insurance on oats.

Another way to ascertain the amount of the former compound, but now specific, insurance to be taken from wheat and corn to make good the deficiency of insurance on oats, is to take 1,000/5,133 of $133, or $25.91, from the Aetna insurance on wheat; 1,200/5,133 of $133, or $31.09, of the Home insurance on wheat; 1,333/5,133 of $133, or $34.54, of the Aetna

insurance on corn, and 1,600/5,133 of $133, or $41.46, of the Home insurance on corn, making a total of $133.

Re-Apportionment and Contribution on Wheat.

Continental insures	$2,500.00	Pays	$1,615.34
Aetna insures	974.09	Pays	629.39
Home insures	1,168.91	Pays	755.27
Total insurance	$4,643.00	Pays	$3,000.00

Re-Apportionment and Contribution on Corn.

Continental insures	$3,000.00	Pays	$2,048.84
Aetna insures	1,298.46	Pays	886.76
Home insures	1,558.54	Pays	1,064.40
Total insurance	$5,857.00	Pays	$4,000.00

Re-Apportionment and Contribution on Oats.

Continental insures	$2,000.00	Pays	$2,000.00
Aetna insures	2,727.45	Pays	2,727.45
Home insures	3,272.55	Pays	3,272.55
Total insurance	$8,000.00	Pays	$8,000.00

Continental pays on wheat	$1,615.34
Continental pays on corn	2,048.84
Continental pays on oats	2,000.00
Total loss paid	$5,664.18

Aetna pays on wheat	$629.39
Aetna pays on corn	886.76
Aetna pays on oats	2,727.45
Total loss paid	$4,243.60

Home pays on wheat	$755.27
Home pays on corn	1,064.40
Home pays on oats	3,272.55
Total loss paid	$5,092.22

Continental pays	$5,664.18
Aetna pays	4,243.60
Home pays	5,092.22
Total loss paid	$15,000.00

After an apportionment has been made, the amount of the former compound, but now specific, insurances to be taken from any item for a re-apportionment, must not reduce the total insurance on the item to

less than the loss. If it should reduce the insurance below the loss, then only the excess of insurance above the loss should be taken, and the remainder should be taken from the other item, if there is any.

AVERAGE CLAUSE—DISTRIBUTION FORM.

It is understood and agreed that the amount insured by this policy shall attach, in each of the above named premises, in that proportion of the amount hereby insured, that the value of property covered by this policy, contained in each of said places, shall bear to the value of such property contained in all of the above named premises.

The effect of this clause is to make the insurance specific in the different locations, or on the different classes of property covered by the insurance. To apply this clause produces the same results as it would if we applied the Reading Rule. As this clause and the rule have been fully explained herein by example, it is unnecessary to repeat it here. When this clause is applied the amount of insurance it fixes on each class of property, or in each location, is the specific insurance, and each amount is the maximum contributive liability.

Under this clause, if we have two buildings valued at $16,000, one worth $10,000, and the other $6,000, with $12,000 insurance, we readily understand that this $12,000 insurance becomes specific on each building as the value of each building bears to the value of both buildings. Six-sixteenths, or $4,500, covers on one building, and ten-sixteenths, or $7,500, covers on the other building. These two items are specific insurance, the same as if these figures had been set forth in the policy in the place of using the Average Clause.

LIMITATION CLAUSES.

In every insurance policy there are two limits of liability. One is the contributive liability, and the other is the loss liability. The contributive liability is the maximum amount which a policy can be called on to contribute from to pay a loss. The loss liability is the amount the company can be compelled under the conditions of the policy to pay. The contributive liability and the maximum loss liability are not always the same. The contributive liability is the limit of insurance named in the policy, providing there is only one item insured and no average clause

—distribution form—on the policy. If there are two or more items insured specifically, then the amount insured on each is the contributive liability. The loss liability is limited in every policy to the actual amount of loss, but not exceeding its contributive liability, and in some policies by the use of limitation clauses it is limited to not exceeding a stated amount, or a certain percentage of the sound value or loss.

The three-fourths value, three-fourths loss, average and co-insurance clauses are a special contract made between the assured and the company having the limitation clause on its policy. Under the form of policies now being used no company is entitled to the benefit of a clause unless it is on its policy. These limitation clauses are the sources of considerable trouble when there is other insurance without the same kind of clause. When there is no additional insurance, or if there is other insurance and it is concurrent, the clause can be easily applied and the results intended to be secured by its application can be quickly determined.

It is first absolutely necessary to determine what the effect of the clause on the policy is. Whether it limits the contributive liability, by fixing the amount of insurance on each item, or whether it reduces the loss liability to an amount less than the contributive liability, and makes no change in the amount of the contributive liability.

There are several kinds of limitation clauses, and they may be divided into three classes.

Class Number One.

The first is where the clause fixes a maximum limit of loss liability, which is the basis for contribution to be made by all the insurance, as provided by the pro rata contribution clause. In these cases the loss liability is determined first, and the contribution is made afterwards.

Class Number Two.

The second is where the basis of contribution is the total loss, and the liability of each company is fixed in its policy. The contribution is made first, and the limitation clause applied afterwards, in these cases.

Class Number Three.

The third is where the liability of each company is fixed by its contract, regardless of the pro rata contribution clause, and the other insurance.

I will give an example of an adjustment of a claim under each one of the various limitation clauses. I will first take a case where the policies are concurrent, and then take the same case and make some of the policies non-concurrent, as we frequently find them, and make the apportionment and contribution.

Class Number One.

This class fixes a maximum limit of loss liability which is the basis for contribution, to be made by all the insurance as provided by the pro rata contribution clause.

The three-fourths value, three-fourths loss, and all limitation clauses which fix a basis of contribution and make the amount which is the basis for contribution the maximum liability of all the companies, are of this class.

THREE-FOURTHS VALUE CLAUSE.

It is a part of the consideration of this policy, and the basis upon which the rate of premium is fixed, that in the event of loss this company shall not be liable for an amount greater than three-fourths of the actual cash value of the property covered by this policy at the time of such loss, and in case of other insurance, whether policies are concurrent or not, then for only its pro rata proportion of such three-fourths value.

Statement.

Continental, on building	$5,000.00
Aetna, on building	5,000.00

Each of the policies had on it the three-fourths value clause. The loss was $9,000. The value of the building was $11,000. Three-fourths of $11,000 is $8,250, which is the basis of contribution, and the maximum limit of liability of all the companies.

Apportionment and Contribution.

Continental insures	$5,000	Pays $4,125
Aetna insures	5,000	Pays 4,125
Total loss paid		$8,250

By the application of this clause, the assured does not receive his full loss, though his insurance was $1,000 more than the total loss. He does, however, receive all he should, under the contracts he made. There is in this case no arbitrary apportionment.

Statement.

Continental, on building $5,000
Aetna, on building 5,000

The loss is $9,000. Three-fourths value clause on Continental policy.

The value of the building was $11,000. Three-fourths of $11,000 is $8,250. The difference between $9,000, the loss, and $8,250, three-fourths of the value, is $750. This $750 is covered only by the Aetna policy, which is the compound insurance.

This class of cases comes under the Cromie rule, and are easily disposed of when fully understood. I will apply the rule to this case, which will bring out the point clearly.

The policy with the three-fourths value clause on it covers an undivided three-fourths of the described property, and the undivided one-fourth is, if there is other insurance, without this clause, an interest covered only by the compound insurance. The one-fourth interest which the policy, with the three-fourths clause on, does not cover, is covered by the other insurance, which does not have the three-fourths value clause in the contract, and it is the compound insurance.

Apportionment and Contribution on One-Fourth Interest.

Aetna insures	$750	Pays	$750
Total loss paid			$750

Apportionment and Contribution on Three-Fourths Interest.

Continental insures	$5,000	Pays	$4,459.46
Aetna insures	4,250	Pays	3,790.54
Total loss paid			$8,250.00
Aetna pays one-fourth interest.....			$750.00
Aetna pays three-fourths interest.....			3,790.54
Total loss paid			$4,540.54
Continental pays			$4,459.46
Aetna pays			4,540.54
Total loss paid			$9,000.00

THREE-FOURTHS LOSS CLAUSE.

This clause is a limitation of the loss liability of all the companies to three-fourths of the loss, and the

three-fourths of the loss is the basis of contribution. Each company pays its pro rata proportion of this amount as provided by the pro rata contribution clause. This clause deals entirely with the amount of the loss. In all other respects its application is the same as that of the three-fourths value clause.

The three-fourths loss clause produces a limit of loss liability, and though the clause differs from the three-fourths value clause, it would, if there was other insurance without the clause, be covered by the rule made by the court in the Cromie case. The three-fourths loss clause is so little used now it is unnecessary to apply it to an actual case. It makes no difference what the percentage of limit of loss liability is. The rule can and should be applied in every case.

LIVE STOCK LIMITATION CLAUSE.

There are several kinds of live stock limitation clauses, but those that are of this class (Class Number One) are short and differ in the wording, but all of them have the same meaning. "No animal to be valued above $100" and "The total loss on any animal not to exceed $200," are the common forms of this clause.

The limit named in this clause is the maximum limit of loss liability of all the insurance. This limit is the basis of contribution, but the contribution is made from the total insurance, according to the pro rata contribution clause.

Statement.

Continental—On horses	$1,500
Aetna—On horses	1,000

No horse to be valued above $500 is the limitation of liability. The one horse killed was worth $750.

Apportionment and Contribution.

Continental insures	$1,500	Pays $300
Aetna insures	1,000	Pays 200
Total loss paid		$500

The insured, though he has insurance for $1,750 more than his loss, receives $250 less than the loss. In this case the assured has surrendered and contracted away his right to recover his full loss. He has limited his right of recovery from all the com-

panies to not exceeding $500. There is no arbitrary apportionment of the insurance, so that there would be no chance for a court to increase this amount unless it nullified the limitation clause.

Statement.

Continental—On horses $1,500
Aetna—On horses 1,000

There is no limitation clause on the Continental policy. No animal to be valued above $500 is the limit fixed in the Aetna policy. The value of the one horse killed was $750.

We have here non-concurrent insurance. The policy of the Continental is compound insurance. The liability for all the insurance, as fixed by the limitation clause in the Aetna policy, is $500, and to this extent the policies are concurrent. There is a liability here which is covered by the Continental policy alone, and it is $250, which is the difference between $750, the loss, and $500, the maximum limit of loss liability for all the insurance, as fixed by the Aetna policy.

Apportionment and Contribution on Interest Covered Only by the Continental.

Continental insures .....$250 Pays $250

Total loss paid $250

The amount of the Continental policy has been reduced $250, the amount apportioned to pay its undivided liability, which leaves $1,250 to contribute with the $1,000 policy of the Aetna to pay the $500, the liability of both companies.

Apportionment and Contribution on Interest Covered by Both Companies.

Continental insures .....$1,250 Pays $277.77
Aetna insures ..... 1,000 Pays 222.23

Total loss paid $500

Continental pays under first apportionment...$250.00
Continental pays under second apportionment. 277.77

Total loss paid $527.77

Continental pays $527.77
Aetna pays 222.23

Total loss paid $750.00

This case, because of the compound insurance, requires an arbitrary apportionment, and it comes within the scope of the Cromie Rule. I have applied the Cromie Rule in this adjustment.

Class Number Two.

If the total loss is the basis of contribution, and the liability of each company is fixed in its policy by a special limit, the clause belongs to this class.

This class includes the ordinary live stock clauses where the liability of the company is limited to not exceeding a stated amount, or three-fourths of the value.

LIVE STOCK LIMITATION CLAUSE.

It is hereby expressly provided and mutually agreed, that in no case (except in the case of more valuable animals insured specifically hereunder by names and numbers) shall this company be liable for more than $75 on any one Horse or Mule, nor for more than $35 on any Colt under two years old; nor for more than $20 on any Colt under one year old; nor for more than $30 on any one head of Cattle, nor for more than $15 per head if under two years old; nor for more than $3 on any one Sheep, or $10 on any one Hog; nor in any case for more than the actual cash value of the animal of any class destroyed or damaged.

This live stock limitation clause is found in all of our farm policies and applications. The first question that arises is, What is the limitation effect of this clause? Is it a loss limitation only, or is it a maximum of loss limitation and contributive liability?

This clause is a maximum limitation of loss liability. The amount named as the limit of liability on each class of animals is the limit of the loss liability on the animal of that class, and the total insurance is the maximum contributive liability.

At first it seems more reasonable to consider it a maximum limitation of loss and contributive liability, but after applying it to several cases as such, and studying the result and probable complications that may arise, I am satisfied it is simply intended as a limitation of loss liability.

Reduced Rate for Live Stock Insurance.

In consideration of the acceptance by the assured of the following clause and his agreement that the

same shall be made a part of his policy, a reduction in the rate of premium on live stock has been allowed from 3 per cent. to 2 per cent. The clause referred to is as follows, viz: It is a part of the consideration of this policy, and the basis upon which the rate of premium is fixed, that in case of loss on any particular kind of live stock, claim for same shall not exceed three-fourths of the value of such animal killed, and shall not exceed the limit on such animal as specified in this policy.

This clause simply limits the liability. If an animal is worth $40, this clause makes a limit of $30, and the effect of this clause is the same as it would be if the limit in the policy was $30.

In this class of cases there is no arbitrary apportionment. The contribution to be made on each animal is provided for in the pro rata contribution clause. The pro rata contribution is made first, and the limitation clauses, if practicable, are applied afterwards to determine the actual liability of each company.

Statement.

Continental—On horses	$200	Limit $75
Aetna—On horses	500	No limit.

The loss was one horse worth $210.

Apportionment and Contribution.

Continental insures	$200	Pro rata liability	$60
Aetna insures	500	Pro rata liability	150
Total pro rata liability			$210

The application of the pro rata contribution clause fixes the loss of the Continental at $60, and as this is less than the limit, the limitation clause does not apply. The liability of the Aetna is made $150, and as this exceeds its special limit of liability, the limitation clause must be applied, and it makes the loss $75.

Continental pays	$60
Aetna pays	75
Total loss paid	$135

This limitation clause is a special contract made between the assured and the company, and it becomes operative only when the contribution to be made by any company, under the pro rata contribution clause, exceeds the limit.

We sometimes have cases where the limits of loss liability on each animal are different. I will apply the rule to a case of this kind:

Statement.

Continental—On horses .....$200 Limit $75
Aetna—On horses ..... 500 No limit.

One horse, valued at $210, was killed.

Apportionment and Contribution.

Continental insures .....$200 Pays $60
Aetna insures ..... 500 Pays 150

Total loss paid $210

The pro rata liability of the Continental is $60, which is less than its limit. The Aetna has no limit, therefore it must pay $150. In this case the assured receives his full loss.

The case I will call your attention to now is the same as the last, except that there are three companies and three different limits.

Statement.

Continental—On horses .....$300 Limit $75
Aetna—On horses ..... 500 Limit 100
Home—On horses ..... 500 No limit.

The loss was one horse killed, worth $400.

There are three companies and one has a limit of liability of $75, one of $100, and the Home has no limit.

Apportionment and Contribution.

Continental insures ...$300 Pro rata liability $92.30
Aetna insures ..... 500 Pro rata liability 153.85
Home insures ..... 500 Pro rata liability 153.85

Total pro rata liability.....$400.00

The liability of the Continental is limited to $75, and that of the Aetna to $100, and the Home has no special limit.

The companies would pay as follows:

Continental pays $75.00
Aetna pays 100.00
Home pays 153.85

Total loss paid $328.85

I will apply this rule to another case which may come up under this live stock limitation clause.

Statement.

Continental—On horses $300
Aetna—On horses 500
Home—On horses 500

Aetna and Home have no limit, but the Continental has a limit of $75 on horses, and $35 if under two years of age.

There was one horse killed, worth $280, and one colt killed, worth $150, which was under two years old. The total loss being $430.

Apportionment and Contribution.

Continental insures ...	$300	Pro rata liability	$99.24
Aetna insures	500	Pro rata liability	165.38
Home insures	500	Pro rata liability	165.38
Total pro rata liability.....			$430.00

In this pro rata contribution I have made the total loss on the horse and colt the basis of contribution. We can not tell from this contribution whether the Continental contributes more than $75 on the horse and $35 on the colt, or not. In order to avoid the mistakes that might result from this form of statement, I would suggest that the contribution be made on each animal.

Apportionment and Contribution on Horse.

Continental insures ...	$300	Pro rata liability	$64.62
Aetna insures	500	Pro rata liability	107.69
Home insures	500	Pro rata liability	107.69
Total pro rata liability.....			$280.00

Apportionment and Contribution on Colt.

Continental insures ...	$300	Pro rata liability	$34.62
Aetna insures	500	Pro rata liability	57.69
Home insures	500	Pro rata liability	57.69
Total pro rata liability.....			$150.00

The limit fixed by the Continental policy was $75 on the horse and $35 on the colt. In the statement showing the pro rata liability of the Continental there is $64.62 on the horse, and $34.62 on the colt. Both of these amounts are less than the limits, and amount to $99.24.

Continental pays on horse	$64.62
Continental pays on colt	34.62
Total loss paid	$99.24
Aetna pays on horse	$107.69
Aetna pays on colt	57.69
Total loss paid	$165.38
Home pays on horse	$107.69
Home pays on colt	57.69
Total loss paid	$165.38
Continental pays	$99.24
Aetna pays	165.38
Home pays	165.38
Total loss paid	$430.00

There are cases, sometimes, which require our attention that are very badly mixed. Where the policies are different. Where no two of them are concurrent. The Supreme Court of Wisconsin decided a case of this kind, and as it will be a good opinion to study, I will make it a part of this communication.

The case of Sherman vs. Madison Mutual Insurance Company, which was decided by the Supreme Court of Wisconsin February 1, 1876, undoubtedly involves a more complicated state of facts than you will ever find in your work.

Statement.

The Madison Mutual Insurance Company covered $1,500 on cattle, *with no limitation clause.* The Continental Insurance Company had a line of $1,667 on cattle, *being not to exceed $500 on any one animal.* The North Missouri Insurance Company carried $1,667 on cattle, and *no one animal to be valued at more than $500.*

There was a loss on one bull, valued at $2,000, and three steers, worth $336.

Decision.

"The defendant company issued three policies of insurance to the plaintiff, of five hundred each, on stock. A loss having occurred, the defendant paid the plaintiff $724.96 on account thereof, claiming that to be the extent of its liability. The plaintiff claimed that its liability exceeded that sum, and brought this action to recover such excess. The complaint is in the usual form of such complaints on fire insurance

policies. As defenses to this action it is alleged in the answer: 1. That the policies contained covenants that they should be void if the plaintiff procured other insurance on the property, and failed to give notice thereof to the defendant, and have the same endorsed on the policies, and that the plaintiff obtained other insurance thereon, but failed to give such notice. 2. That if the policies are valid there was other insurance on the property, and under the usual clause, that in case of loss the defendant should be liable only for a proportionate share thereof, it has already paid its share of the loss in full.

"The cause was tried by the court without a jury, and on the trial witnesses called by the plaintiff testified to computations produced by them of the amount of the defendant's liability on the policies in suit, and also testified as experts to the rule for adjusting the loss.

"The judge subsequently filed his findings of fact and conclusions of law therefrom, and ordered judgment for the plaintiff in accordance therewith. Judgment as above directed was entered for the plaintiff, and the defendant has appealed therefrom.

"It only remains to determine whether the county court correctly adjusted the plaintiff's loss. The adjustment is contained in the tenth finding of the fact, although such finding is substantially a conclusion of law, and must be treated as such.

"The live stock destroyed exceeded in value the amount of the risk taken thereon by the defendant, and but for the other insurance thereon, the defendant would be liable to pay the whole risk. The clause in the policies which reduces such liability is as follows: 'In all cases of other insurance upon the property, whether prior or subsequent to the date of this policy, in case of loss or damage by fire, the insured shall not be entitled to demand or recover on this policy any greater portion of the loss or damage sustained than the amount hereby insured bears to the whole amount insured on said property.' The clause itself furnishes the rule of adjustment in reasonably plain terms, and there should not be much difficulty in the application of the rule to particular cases. Where there are several risks upon the same property, giving the amount of each and the loss, it is an easy process to apportion the loss to the several risks.

"It is said on behalf of the defendant that the aggregate of insurance on the live stock was $4,833.33

and the loss $2,336, and that the amount of defendant's liability is a mere problem in proportion, which may be stated and solved thus: $4,833.33 : $1,500 : : $2,336 : $725. This process makes the defendant liable only for the sum which it voluntarily paid before the action was commenced, and if correct, defeats the action. But is it correct? The plaintiff is entitled to full indemnity for his loss; that is, he is entitled to receive from the three companies who insured his live stock $2,336. That is a right which he has paid for, and has not surrendered or stipulated away. It is entirely clear that the liability of the North Missouri Company (stated in round numbers) is only $288, and of the Continental but $616. So the formula given on behalf of the defendant falls short of full indemnity to the plaintiff over $700. Hence it is incorrect, and the error in it is very apparent.

"It is true that the plaintiff had insurance to the amount of $4,833.33 on his steers, and also his bull, valued at $500, and to that extent the above formula is entirely applicable. But he had not that amount of insurance on the residue of the value of his bull. On such residue the North Missouri had no risk whatever; the Continental had a risk limited by its contract with the plaintiff to $500 on the bull, which left only $327.50 on the residue of his value over $500, and the defendant, after deducting its proportion of the loss on the steers and on the bull valued at $500 (being $260) had a risk of $1,240 on such residue. So instead of having an insurance of $4,833.33 on $1,500 of the value of his bull, the plaintiff had only $1,567.50 insurance thereon. Suppose, instead of losing one bull worth $2,000, the plaintiff had lost two bulls, one worth $500, the other worth $1,500; and suppose also that the North Missouri policy did not include the latter, and that the liability of the Continental on both bulls was limited to $500, the rule for adjusting the loss between the three companies would be perfectly plain. They would pay pro rata for the steers and the $500 bull. The Continental would pay $327.50 of the value of the other bull, and the defendant would be liable for the balance thereof, being $1,172.50.

"We think the case supposed and the one under consideration are identical in principle and results, and that the learned county judge correctly adjusted the liability of the defendant for the plaintiff's loss.

"We construe the contracts before us, and adjust and determine the liability of the defendant, in the

light of legal principles as we understand them, without resorting to the opinions of the experts, yet we use their computations precisely as a court may use a computation of the amount due on a promissory note, verified by a witness on the stand. It is unnecessary, therefore, to determine whether the rule of adjustment in this or any other case may be proved by the testimony of experts.

"Judgment affirmed."

Sherman vs. Madison Ins. Co., 39 Wis. 104.

This case was reported in the Insurance Law Journal, and the publisher added the following note to the opinion:

Note.—As this case is of special importance to adjusters, the following explanation will make it more intelligible. Company (1) insures on live stock, $1,500. Company (2) insures on live stock, $1,667, 'being not to exceed $500 on any one animal.' Company (3) insures live stock, $1,667, 'no one animal to be valued at more than $500.' Loss, one bull, $2,000, and three steers, $336; total, $2,336.

"The adjustment of the court may be stated thus: Total insurance on steers and on bull, valued at $500, $4,834, on which all pro rate as follows:

	Bull at $500.	Steers.
Company (1) pays	$155	$105
Company (2) pays	172	116
Company (3) pays	172	116

"Leaving Company (2) $328 of unexhausted insurance on the bull, which is applied to the excess of value above $500; the remained of that excess, $1,172, is to be borne by Company (1), making the total payment of each as follows: Company (1), $1,432; Company (2), $616; Company (3), $288."

Sherman vs. Madison Mutual Insurance Company, 5 Ins. Law Journal 285.

I do not give you a copy of the Sherman case because I think it a correct adjustment of this claim. It is a complicated case, and therefore a good one to study.

The adjustment of this claim necessitates considering the conditions of three policies, each one of which is subject to a different rule, to determine its liability.

The policies (there were three of them) of the Madison Mutual did not contain any special limitation clause. Its liability, then, was a pro rata pro-

portion of the loss, as provided by the pro rata contribution clause. If all of the insurance had been of this class, the adjustment would be easy.

The policy issued by the Continental was like those of the Madison Mutual, except that it contained this clause: *"Being not to exceed $500 on any one animal."* This policy is liable for its pro rata proportion of the loss, but not exceeding the limit of $500 for any one animal. In this class of cases the pro rata liability is determined first, and if the liability on any one animal exceeds the limit, the limitation clause is applied. This policy belongs to what I call Class No. 2.

The North Missouri had a policy, same as those of the Madison Mutual, except that it contained the following limitation clause: *"No one animal to be valued at more than $500."* This class of insurance is described in what I have called Class No. 1. The liability of this company is its pro rata proportion of the loss, but the loss, which is the basis for contribution, must not exceed $500 on any one animal. The maximum liability of all the insurance is fixed first in these cases, and then the liability of each company is ascertained by applying the pro rata contribution clause.

In making a statement of this case, I will call the whole insurance $4,834.

You probably have noticed that the court made all of the insurance ($4,834) contribute to pay $500 on the bull, which was the maximum limit of contribution fixed in the North Missouri policy, and $336 on the three steers. As the bull was worth $2,000, there is an interest of $1,500 in the bull, which, for the purpose of adjusting the liability of the North Missouri, the court entirely ignored. The court applied what I have herein named the Chicago and Hartford rules. The court did not do justice to the Madison Mutual. This company, with $1,500 insurance, is made to contribute from $2,740, and the Continental, with a policy of $1,667, is treated as if it were a policy of $3,046. The insurance of the Madison Mutual and Continental is compound. These companies cover the $1,500 interest in the bull, which is not covered by the North Missouri. These two companies must pay this $1,500. This feature of the adjustment comes within the scope of the Cromie rule. An amount of the two policies equal to the loss must be apportioned as the insurance to pay the loss.

We have a claim of $1,500, and the two companies, with $3,167 of insurance, must furnish the insurance to pay this amount. The Madison Mutual should furnish 1,500/3,167 and the Continental 1,677/3,167.

Apportionment.

Madison Mutual, on $1,500 interest.....	$710.46
Continental, on $1,500 interest.....	789.54
Total insurance	$1,500.00

You will notice that the Continental is called on for $789.54 insurance, and, under this apportionment, would have to pay the same amount. It can not do it, as its limit is $500. It is evident that $1,000 of the Madison Mutual and $500 of the Continental insurance must satisfy this $1,500 claim.

Re-Apportionment and Contribution on $1,500 Interest.

Madison Mutual insures.....	$1,000	Pays	$1,000
Continental insures	500	Pays	500
Total loss paid			$1,500

The Madison Mutual now has $1,500 insurance on $500 interest in bull and on the steers. The Continental has paid its limit of loss liability on the bull, and now has $1,167 insurance on the steers. The North Missouri has $1,167 insurance on the $500 interest in the bull and on steers.

The insurance remaining, as stated above, should be apportioned as provided in the Griswold Rule, and the $500 of the Madison Mutual insurance, and $1,167, the amount of the North Missouri policy, should be made specific on the bull and steers, as follows: 500/836 covering bull and 336/836 being apportioned to the steers. The Madison Mutual would have $299.04 on bull, and $669.99 on steers.

Apportionment and Contribution on $500 Interest in Bull.

Madison Mutual insures.....	$294.04	Pays	$115.36
North Missouri insures.....	997.01	Pays	384.64
Total loss paid			$500.00

Apportionment and Contribution on Steers.

Madison Mutual insures	$200.96	Pays $33.13
Continental insures	1,167.00	Pays 192.41
North Missouri insures	669.99	Pays 110.46
Total loss paid		$336.00
Madison Mutual pays under first apportionment		$1,000.00
Madison Mutual pays under second apportionment		115.36
Madison Mutual pays under third apportionment		33.13
Total loss paid		$1,148.49
Continental pays under first apportionment...		500.00
Continental pays under third apportionment.		192.41
Total loss paid		692.41
North Missouri pays under second apportionment		384.64
North Missouri pays under third apportionment		110.46
Total loss paid		$495.10
Madison Mutual pays		$1,148.49
Continental pays		692.41
North Missouri pays		495.10
Total loss paid		$2,336.00

It will not do to assume, for the purpose of fixing the liability of the North Missouri, that the whole insurance covered only the property and interest it was pro rata liable for. There was $1,500 of the Madison Mutual and Continental policies that covered from the time of the fire on the $1,500 interest in the bull, and this is a fact as much as if their policies, to the extent of $1,500, had been written specifically on this particular interest in the bull.

Class Number Three.

This class includes all limitation clauses which fix the liability of a company, without reference to the other insurance and pro rata contribution clause. This class includes all co-insurance clauses.

CO-INSURANCE CLAUSES.

The co-insurance clauses are limitation clauses, and they are a specific contract made by the assured and

the company which has a co-insurance clause on its policy.

In cases of this class the rule generally applied for the purpose of fixing the loss to be paid by each class of companies is to make the apportionment and contribution of each class as if all the insurance was the same. That is, to ascertain what loss the insurance with the co-insurance clause should pay, treat the case as if all the insurance had a like co-insurance clause. I will apply the rule to a case where one company has the 80 per cent. co-insurance clause.

EIGHTY PER CENT. CO-INSURANCE CLAUSE.

"It is a part of the consideration for this policy, and the basis upon which the rate of premium is fixed, that the assured shall maintain insurance on the property described by this policy to the extent of at least eighty (80) per cent. of the actual cash value thereof, and that, failing so to do, the assured shall be a co-insurer to the extent of such deficit, and to that extent shall bear his, her or their proportion of any loss, and it is expressly agreed that in case there shall be more than one item or division in the form of this policy, this clause shall apply to each and every item."

Statement.

Continental insures $5,000.
Aetna insures $6,000.
Home insures $9,000.

The only policy having the 80 per cent. co-insurance clause is the Continental. The loss is $12,000, and sound value $40,000. The assured has agreed to carry $32,000 insurance or become a co-insurer for the difference between the $32,000 and $20,000, the amount of insurance which he actually carried, which is $12,000.

Apportionment and Contribution.

Continental insures	$5,000	Pays $1,875
Aetna insures	6,000	Pays 2,250
Home insures	9,000	Pays 3,375
Assured insures	12,000	Pays 4,500
Total loss paid		$12,000

This shows that the Continental has to pay $1,875, which, being five thirty-seconds of $12,000, we know it is correct. The Aetna and Home policies did not

have the 80 per cent. co-insurance clause, consequently they are not entitled to its benefits.

According to the rule which we are applying, we must treat all the policies as if they were like the Aetna and Home, to ascertain what amount of loss the Aetna and Home should pay.

Apportionment and Contribution.

Continental insures	$5,000	Pays $3,000
Aetna insures	6,000	Pays 3,600
Home insures	9,000	Pays 5,400
Total loss paid		$12,000

Continental pays	$1,875
Aetna pays	3,600
Home pays	5,400
Total loss paid	$10,875

The assured loses, by his failure to have his policies concurrent, $1,125. The liability of the Continental is limited by a special contract to five thirty-seconds of $12,000, the amount of the loss. The liability of the Aetna and Home is limited by the pro rata contribution clause. There is no arbitrary apportionment of insurance in this case.

The Continental, as you will see by the application of this rule, is made to contribute $3,000 to pay assured's full loss. As the liability of the Continental is limited by a special agreement with assured to $1,875, the assured fails to get his full loss by the application of this rule, though the insurance exceeded the loss by $8,000.

Under either the full co-insurance clause or the average clause—co-insurance form—we have 100 per cent. co-insurance agreement, and it can be applied as easily as the 80 per cent. co-insurance clause.

FULL CO-INSURANCE CLAUSE.

If, at the time of fire, the whole amount of insurance on the property covered by this policy shall be less than the actual cash value thereof, this company shall, in case of loss or damage, be liable for such portion only of the loss or damage as the amount insured by this policy shall bear to the actual cash value of such property.

AVERAGE CLAUSE—CO-INSURANCE FORM.

It is understood and agreed that, in case of loss under this policy, the company shall be liable only for such proportion of the whole loss as the amount of this insurance bears to the cash value of the whole property herein described, at the time of the fire.

Statement.

Continental insures $5,000.
Aetna insures $6,000.
Home insures $9,000.

The Continental policy has a full co-insurance clause, and the others have none. The value of the described property is $40,000, and there is a loss of $12,000.

I will make the contribution, as I think it ought to be made, under a full co-insurance clause.

Apportionment and Contribution.

Continental insures	$5,000	Pays	$1,500
Aetna insures	6,000	Pays	1,800
Home insures	9,000	Pays	2,700
Assured insures	20,000	Pays	6,000
Total loss paid			$12,000

The liability of the Aetna and Home is fixed by the pro rata contribution clause, and in order to ascertain the liability of these companies, we must consider the Continental as a co-insurer to the extent of $5,000, and leave the assured out.

Apportionment and Contribution.

Continental insures	$5,000	Pays	$3,000
Aetna insures	6,000	Pays	3,600
Home insures	9,000	Pays	5,400
Total loss paid			$12,000

Continental pays	$1,500
Aetna pays	3,600
Home pays	5,400
Total loss paid	$10,500

Each one of the companies has paid all its contract makes it liable for, and the assured loses $1,500.

LIVE STOCK CO-INSURANCE CLAUSE.

"It is a part of the consideration of this policy and the basis upon which the rate of premium is fixed that in case of loss on any particular kind of live stock, claim for same shall not exceed such proportion of said loss as the amount herein insured on such particular kind of live stock bears to three-fourths of the entire value of that kind of live stock owned by the assured at the time of loss, and shall not exceed the limit on each animal as specified in this policy, nor its value."

This is a 75 per cent. co-insurance clause, and in its application is governed by the same rules applied to the 80 per cent., and full co-insurance clauses.

I have been able to find but one decision touching the point I have herein raised regarding the contribution between policies when some have and some have not a co-insurance clause. This case was lately decided by the Missouri Appellate Court. It is the case of Armour Packing Company vs. Reading Fire Insurance Company, 57 Mo. App. 215.

In this decision the court held that when there is other insurance without the co-insurance clause, the purpose and effect of a co-insurance clause is to limit the loss liability of a company by fixing the maximum contributive liability. If we have a $5,000 policy with an 80 per cent. co-insurance clause, where the sound value is $40,000, and $15,000 additional insurance, without a similar co-insurance clause, we would have, for the purpose of contribution, $2,777.78 of specific insurance.

This $2,777.78 of insurance made specific under a policy issued for $5,000, which had an 80 per cent. co-insurance clause, because there were other policies without the co-insurance clause, is as much an item of specific insurance for the purpose of contribution as if it were the result of applying the average clause, distribution form, or as if it were so stated in the policy, if this decision is good law.

Rule.

Multiply the amount of insurance having the co-insurance clause by the amount of insurance carried without the co-insurance clause, and divide the product by amount of additional insurance the assured agreed to carry, and the quotient will be the amount of specific insurance carried under the co-insurance clauses. Each policy with a co-insurance clause will

carry such a part of this specific insurance as the amount of the policy bears to the total amount of all the policies with the co-insurance clause.

I will first apply this rule to a case where there was an 80 per cent. co-insurance clause involved.

Statement.

Continental insures $5,000.
Aetna insures $6,000.
Home insures $9,000.

The Continental policy is the only one with an 80 per cent. co-insurance clause. The value of the property covered by the insurance is $40,000, and the loss is $12,000. The additional insurance carried without the 80 per cent. co-insurance clause is $15,000. Eighty per cent. of the value of $40,000 is $32,000, which is the total amount of insurance the assured agreed to carry.

When we apply the rule we have $5,000, the amount of insurance with the co-insurance clause, multiplied by $15,000, the amount of additional insurance carried without the co-insurance clause, equals $75,000,000, which, divided by $27,000, the amount of additional insurance assured agreed to carry, gives $2,777.78, the actual amount of contributive liability of the Continental.

Apportionment and Contribution.

Continental insures	$2,777.78	Pays $1,875
Aetna insures	6,000.00	Pays 4,050
Home insures	9,000.00	Pays 6,075
Total loss paid		$12,000

The liability of the Continental to the assured under the 80 per cent. co-insurance clause in this case is five thirty-seconds of $12,000. As this is $1,875, we know the Continental does not suffer by this rule.

I apply this rule to make plain to you the principle involved in the Armour decision.

I will apply the rule made by the court in the Armour case to determine the liability of the companies under a full co-insurance clause.

Statement.

Continental insures $5,000.
Aetna insures $6,000.
Home insures $9,000.

There is a full co-insurance clause on the Continental policy, but no co-insurance clauses on the policies of the Aetna and Home. The property covered by the three policies was worth $40,000, and there is a loss of $12,000. The additional insurance without the full co-insurance clause is $15,000. The amount of insurance the assured agreed to carry was $40,000.

We apply the rule, and have $5,000, the amount of insurance with the co-insurance clause, multiplied by $15,000, the amount of additional insurance carried without a co-insurance clause, gives us $75,000,000, which, divided by $35,000, the amount of additional insurance the assured agreed to carry, gives $2,142.86.

Apportionment and Contribution.

Continental insures	$2,142.86	Pays $1,500
Aetna insures	6,000.00	Pays 4,200
Home insures	9,000.00	Pays 6,300
Total loss paid		$12,000

The liability of the Continental, if there were no other insurance, would be five-fortieths of $12,000, the amount of the loss, and as this is $1,500, we know the Continental is not being neglected.

I have applied the rule made by the court in the Armour case to each of the two statements, apportioned under an 80 and a 100 per cent. co-insurance clause. I made the apportionment and contribution in each case as I think is right and legal, and then I made the apportionment and contribution according to the rule of the court in the Armour case. If you have carefully read the different apportionments and noted the points made in them, you are prepared to consider the Armour case.

I will give you a copy of this case, and will then try to explain so that you can understand my objection to it.

Statement of Facts.

"Respondent had insurance upon certain of its property as follows: A policy issued by the Phenix Insurance Company of Brooklyn indemnifying respondent against loss or damage by fire, to an amount not exceeding the actual cash value of the property described in said policy at the time of loss, and in no event exceeding $3,000. The policy contained, among other [illegible] provisions:

"It is a part of the consideration of this policy, and the basis upon which the rate of premium is fixed, that the assured shall maintain insurance on the property covered by each item of this policy to the extent of at least 80 per cent. of the actual cash value thereof, and that, failing to do so, the assured shall be an insurer to the extent of such deficit, and to that extent shall bear their proportion of any loss. * * * In case of other insurance upon the property herein described, whether made prior or subsequent to the date of this policy, whether valid or not, the assured shall be entitled to recover of this company no greater proportion of the loss sustained than the sum hereby insured bears to the whole amount of insurance thereon.

"A policy issued by the Reading Fire Insurance Company of Reading, indemnifying the assured against all direct loss or damage by fire to an amount not exceeding $1,000. Said policy contained the following clause:

"'Other insurance permitted. This company shall not be liable under this policy for a greater proportion of any loss on the described property * * * than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers, covering such property.'

"A policy issued by the Knoxville Fire Insurance Company of Knoxville, Tenn., insuring respondent against loss or damage by fire to the amount of $1,000. Said policy contained the following clause:

"'In no case shall the claim be for a greater sum than the actual damage to, or the cash value of, the property at the time of the fire, nor shall the assured be entitled to recover of this company any greater portion of the loss or damage than the amount hereby insured bears to the whole insurance on said property, whether such insurance be by specific or by general or floating policies, and without reference to the solvency or liability of other insurers.'

"While said policies were in force the property insured was damaged by fire to the amount of $2,200, and at said time the actual cash value of the property covered by said several policies was $10,000, and there was no other insurance than that above specified.

Decision.

It is thus seen that the agreement with the Phenix Company was that it would insure plaintiff's property to the amount of $3,000, provided plaintiff should carry $5,000 more insurance elsewhere, and thus carry a total insurance of $8,000. Had these conditions been carried out, the Phenix Company would have been bound to pay three-eighths of the actual loss, $2,200, and the other companies the remaining five-eighths. But plaintiff failed to secure the $5,000 additional insurance necessary to make the total amount $8,000, but only succeeded in placing $2,000 of the required $5,000. Now the question is, under these altered conditions, for how much were the plaintiffs actually insured in the Phenix Company; and what was the whole insurance? If the Phenix Company was to insure $3,000 of the risk in case the other companies took $5,000, then when the latter only took $2,000 it is plain that the Phenix Company only assumed such a proportion to the $2,000 actually taken by the other companies as $3,000, the sum the Phenix Company originally agreed to take (upon the conditions above stated) bears to the $5,000, the amount plaintiffs agreed to place with the other companies. The rest is simply a question of mathematics. The problem worked out by the old 'rule of three' shows the amount to be $1,200. The total amount of insurance, therefore, was $3,200, of which the Phenix carried three-eighths, or $1,200, and each of the other companies five-sixteenths, $1,000, and in such proportion the actual loss should be apportioned among the three companies—the Phenix, three-eighths, or $825, and the Reading and the Knoxville companies $687 each."

Armour Packing Company vs. Reading Fire Insurance Company, 57 Mo. App. 215.

The rule of this case gives the following:

Multiply $3,000, the amount of insurance with the 80 per cent. co-insurance clause, by $2,000, the amount of insurance carried without the co-insurance clause, gives $6,000,000, which, divided by $5,000, the amount of additional insurance the assured agreed to carry, and you get $1,200. We now have $1,200 for the Phenix to contribute from, with the $2,000 other insurance, to pay $2,200.

The apportionment and contribution in this case was made with the total insurance and maximum contributive liability of the Phenix as $1,200.

Apportionment and Contribution.

Phenix insures	$1,200	Pays $825.00
Knoxville insures	1,000	Pays 687.50
Reading insures	1,000	Pays 687.50
Total loss paid		$2,200.00

There are two reasons why I consider this decision wrong:

First. The rule made by the court is based on an improper and a very unreasonable construction of the contracts. In one policy, we have as a part of the contract an 80 per cent. co-insurance clause. The liability of two of the companies is fixed by the pro rata contribution clause.

Second. The rule gives the assured the full amount of his loss, without violating the conditions or restricting the application of the 80 per cent. co-insurance clause, if the loss does not exceed the amount of insurance fixed by the rule for the policy with the 80 per cent. co-insurance clause, plus the insurance without the co-insurance. If the loss exceeds this amount the rule restricts the application of the 80 per cent. co-insurance clause and violates the most important condition of the clause.

I can not agree with the statement made by the court in this case that the Phenix only insured $1,200, and that this $1,200 is the amount of insurance that the Phenix carried—though its policy was for $3,000—because of the 80 per cent. co-insurance clause. The co-insurance clause is not a clause like the average clause—distribution form, which fixes a maximum limit of insurance and contributive liability, but it is a clause which limits the loss liability.

In this case the Phenix policy was for $3,000. The value was $10,000, and the loss was $2,200. The loss liability of the Phenix was three-eighths of $2,200, which was $825. The insurance carried by the Phenix was the same after the fire as before, and that was $3,000.

The court says: "It is thus seen that the agreement with the Phenix Company was that it would insure plaintiff's property to the amount of $3,000, provided plaintiff would carry $5,000 more insurance elsewhere, and thus carry a total insurance of $8,000."

This statement of the court is not correct. The amount of the insurance carried by the Phenix did not depend on anything but the plain and simple statement in the policy, that in consideration of so

much money to it paid, it insured somebody against all direct loss or damage by fire to an amount not exceeding a certain number of dollars.

There is a condition in the co-insurance clause which reads: "* * and that, failing so to do, the assured shall be an insurer to the extent of such deficit, and to that extent shall bear their proportion of any loss. * * *" There is no agreement, here, that under certain conditions the amount of the Phenix policy could legally be changed from $3,000 to $1,200. The co-insurance clause provides a result when the assured fails to carry an amount of insurance equal to 80 per cent. of the sound value, and that is, "* * * * and that failing so to do, the insured shall be an insurer to the extent of such deficit, and to that extent shall bear their proportion of any loss. * *"

If there had been a clause on the Phenix policy reading: "The liability of this company is hereby limited to such a proportion of the loss as the amount insured by this policy bears to 80 per cent. of the sound value of the property described in this policy" there would be no doubt but that it was simply a limitation of loss clause. A clause which fixes the liability of the company, independently of any other insurance or the pro rata contribution clause, as a co-insurance clause does, is a limitation of loss liability, and nothing more. In this case there were two conditions of the policies to be construed. One was the 80 per cent. co-insurance clause, and the other was the pro rata contribution clause. These clauses are not complicated. They are not susceptible of two constructions which would give a court authority to apply the construction most favorable to the assured.

In this case the liability of the Phenix was limited by a special contract to three-eighths of the loss. The other companies did not have 80 per cent. co-insurance clauses on their policies, and therefore are not entitled to any of the benefits it provides.

The policy (see lines 98, 99 and 100) reads:" * * * and the extent of the application of the insurance under this policy, or of the contribution to be made by this company, in case of loss, may be provided for by agreement or condition written hereon, or attached or appended hereto. * * *"

Under this clause of the policy any company may limit the application of the insurance, or limit its contributive liability, but the benefits of any clause

written on—attached or appended to—a policy belong only to the company which issued the policy.

The liability of the Knoxville and Reading was not limited by any special contract attached to their policies, but their liability was fixed by the pro rata contribution clause, which is a part of the policy.

PRO RATA CONTRIBUTION CLAUSE.

This company shall not be liable under this policy for a greater proportion of any loss on the described property * * * than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers, covering such property.

This clause limits the liability of the Knoxville and Reading with as much effectiveness as the 80 per cent. co-insurance clause limits that of the Phenix. The court has no right to ignore either condition in this case, unless the statutes of the state makes one or the other, or both, void. There is no arbitrary apportionment of compound insurance, because there was no compound insurance.

In the case of Page Bros. vs. Sun Fire Office, the court made the following statements regarding the insurance contract: "It is not our province to make contracts for the parties to this suit, or to modify those which they have themselves deliberately made, because it appears to us that they might have made those that would have been more equitable or more advantageous. They have made a contract themselves which fixes the amount of the liability of the defendant for this loss. This action is founded on that contract, and it is the sole measure of the defendant's liability."

Page Bros. vs. Sun Fire Office, 25 Ins. Law Journal 865.

This statement of the court is certainly logical, and I believe the motive which prompted it should govern and control us when considering the Armour case, or any similar case.

The rule made by the court in the Armour case has been given and fully explained herein. As I wish to call your attention to it for the purpose of further criticising it, I will repeat it.

Multiply the amount of *insurance* with the 80 per cent. co-insurance clause by the amount of *insurance* carried without the co-insurance clause, and divide the product by the amount of additional *insurance*

the assured agreed to carry, and the quotient will be the amount of *insurance* carried by the company with the co-insurance clause.

The one point that is fatal to this rule is that the *loss* does not enter into the problem, when the rule is applied, to determine the specific insurance.

The loss in the Armour case was $2,200, and this rule made the total insurance $3,200. If, instead of having a loss of $2,200, there had been a loss of $3,200 the assured would receive full indemnity under the application of this rule. The Phenix would pay $1,200, which is three-eighths of $3,200.

I will use the facts in the Armour case, except that I will consider the loss $4,800, to explain in detail my second objection to this decision.

Statement.

Phenix—insures $3,000.
Knoxville—insures $1,000.
Reading—insures 1,000.

The loss is $4,800, and the Phenix policy has an 80 per cent. co-insurance clause. The other policies have no limitation clauses attached. Sound value, $10,000.

Apportionment and Contribution.

Phenix insures	$3,000	Pays	$1,800
Knoxville insures	1,000	Pays	600
Reading insures	1,000	Pays	600
Assured insures	3,000	Pays	1,800
Total loss paid			$4,800

The liability of the Phenix is fixed at three-eighths of the loss, but not exceeding the amount named in the policy. As three-eighths of $4,800 is $1,800, we know the Phenix is contributing its proportion.

I will make the apportionment and contribution to determine the liability of the Knoxville and Reading.

Apportionment and Contribution.

Phenix insures	$3,000	Pays	$2,880
Knoxville insures	1,000	Pays	960
Reading insures	1,000	Pays	960
Total loss paid			$4,800

In this contribution, where we ignore the limitation clause in the Phenix policy, the Phenix is made to pay $2,880, but as its liability is limited to $1,800, it can not be made to pay more.

Phenix pays	$1,800
Knoxville pays	960
Reading pays	960
Total loss paid	$3,720

Each company has fulfilled its contract obligations to the assured, and yet the assured is only receiving $3,720 on a loss of $4,800, with $5,000 insurance.

The rule which the court applied in the Armour case fixed the insurance of the Phenix at $1,200. If the same rule were applied in this case, we would not make any change in the amount of insurance carried by the Phenix. We would have, then, $3,200 of insurance and a $4,800 loss. It must be evident to you that this decision is not based on a proper construction of the contracts, and that it is a very incorrect and improper opinion.

If we follow the rule made by the court in the Armour case, the Phenix would insure only $1,200, the Knoxville $1,000, and the Reading $1,000. By the terms of the Phenix policy its liability is three-eighths of $4,800, the amount of the loss, which is $1,800, but the court, if it applied the rule made in the Armour case, would say as it insured only $1,200 it can not pay $1,800. When the loss in this case exceeds $3,200, the total insurance fixed by the court, the rule of the court is in conflict with the 80 per cent. co-insurance clause. A rule which is applicable when it involves a $3,000 policy, only when the loss does not exceed $3,200, which makes the total insurance and contributive liability of a $3,000 policy $1,200, and which, if the loss were $8,000 or more, would be liable for the full amount of the policy, is, it seems to me, a very bad legal proposition.

I am thoroughly satisfied, after a careful investigation of the Armour case, that the construction of the 80 per cent. co-insurance clause made by the court is radically wrong. I was favorably impressed with the position taken by the court when I first examined the decision, but on a second and more careful examination of it I am convinced the decision is incorrect. The apportionment and contribution in the Armour case should be as follows:

Apportionment and Contribution.

Phenix insures	$3,000	Pays	$825
Knoxville insures	1,000	Pays	275
Reading insures	1,000	Pays	275
Assured insures	3,000	Pays	825
Total loss paid			$2,200

This contribution fixes the liability of the Phenix. To get the amount of loss to be paid by the other companies, we must make another apportionment, and treat the policies as if none of them had a co-insurance clause.

Apportionment and Contribution.

Phenix insures	$3,000	Pays	$1,320
Knoxville insures	1,000	Pays	440
Reading insures	1,000	Pays	440
Total loss paid			$2,200

This contribution makes the liability of the Knoxville and Reading $440 each.

Phenix pays	$825
Knoxville pays	440
Reading pays	440
Total loss paid	$1,705

The assured receives $1,705 when he has an insurance of $5,000, with a loss of $2,200. In these apportionments, each company has contributed its full proportion, as provided by its contract. The assured, however, loses $495. The courts have no right or authority to change these contracts made by the assured and company.

Since the above was written this question has been before the courts of last resort in the states of New York and Wisconsin, and the rule which I have herein favored has been approved. The two decisions are given in full herein, and are as follows:

Farmers' Feed Co. of New Jersey vs. Scottish Union & Nat. Ins. Co. of Edinburgh.

(Court of Appeals of New York, Jan. 13, 1903.)

1. A fire insurance policy provided that the company should not be liable for a greater portion of any loss than the amount insured by its policy should bear to the "whole insurance" on the policy. *Held*, That the words "whole insurance" meant the face value of the policy, together with the face value of all other policies issued on the same property, and in apportioning a loss all other insurance is to be included, whether made by another company or by a contract between it and the insured, under which, on a partial loss, each stands part as a co-insurer.

2. An insured procured policies on the same property in other companies, providing for the payment

of not exceeding a specified sum in case of total loss, or in case of partial loss where the insurance amounted to 80 per cent. of the cash value of the property, the insured agreeing that, if both classes and insurance are each less than 80 per cent., to take less than the amount of his loss, if a loss occurs, and the loss and insurance are each less than 80 per cent., the whole amount of insurance is not the amount of the actual liability of such companies under the circumstances, but is the largest sum which, under any circumstances, they can be compelled to pay, the insured being a co-insurer for the difference between the face value of the policies and the amount of the actual liability of the insured; and, though the total insurance is greater than the actual loss, he is not entitled to recover the whole of such loss, as the amount he agreed to bear must be included in apportioning the loss.

3. Defendant insured plaintiff's property to a certain amount. The policy contained the usual apportionment clause. Thereafter plaintiff procured additional insurance. Each of the policies issued, in addition to the apportionment clause, contained a percentage co-insurance clause, providing that in event of loss the insurer should be liable for no greater proportion thereof than the sum insured bears to 80 per cent. of the cash value of the property, nor more than the proportion which the policy bore to the whole insurance. *Held*, That the defendant insurance company's liability is to be determined by the amount of the face insurance of its policy, divided by the amount of the total insurance, and multiplied by the amount of the loss, and not by the amount of the face insurance of its policy divided by the sum of the amount of its policy and the actual value of the other insurance and multiplied by the amount of the loss.

Appeal from the Supreme Court, Appellate Division, First Department.

Action by the Farmers' Feed Company of New Jersey against the Scottish Union & National Insurance Company of Edinburgh. From a judgment of the Appellate Division (72 N. Y. Supp. 732) affirming a judgment for plaintiff, defendant appeals. Reversed.

Michael H. Cardozo and Edgar J. Nathan, for appellant. Martin Paskusz, Henry L. Cohen and William S. Gordon, for respondent.

VANN, J. This controversy was submitted upon an agreed statement of facts, which, so far as material to the appeal, are as follows: In May, 1898, the

defendant, by a policy of the standard form, insured certain buildings belonging to the plaintiff in the city of New York against loss by fire for the term of three years from the 23d of May, 1898, "to an amount not exceeding $60,000." On the 14th of June, 1900, such insurance to the amount of $17,500 was cancelled by mutual consent, leaving a balance of $42,500 still in force. The policy contained an apportionment clause, which provided that "this company shall not be liable under this policy for a greater proportion of any loss on the described property * * * than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers, covering such property, * * *" On the 5th of June, 1900, the plaintiff procured other insurance on the same property "to an amount not exceeding $5,000" in each of the following companies: The Springfield Fire and Marine Insurance Company, the Providence-Washington Insurance Company, and the Westchester Fire Insurance Company, and "to an amount not exceeding $2,500" in the Insurance Company of the State of Pennsylvania; making $17,500 as the maximum amount for which these four companies could, in any event, become liable. Each of these policies contained a paragraph headed, "Percentage Co-Insurance Clause," of which the following is a copy: "In consideration of the premium for which this policy is issued it is expressly stipulated that in the event of loss this company shall be liable for no greater proportion thereof than the sum hereby insured bears to 80 per cent. of the cash value of the property described herein at the time when such loss shall happen, nor more than the proportion which this policy bears to the total insurance." On the 1st of July, 1900, a fire occurred, by which the property insured, the cash value of which was $124,600, was damaged to the amount of $45,321.18, as ascertained by an appraisal duly had. The plaintiff claims that the amount due from the defendant under its policy "by reason of the fire loss" was $38,177.26, while the defendant claims that such amount was but $32,102.50, which it has paid to the plaintiff under an agreement that such payment should be without prejudice. The Appellate Division rendered judgment in favor of the plaintiff for the difference, between these sums, amounting to $6,074.76, with interest thereon from November 28, 1900.

The decision of the controversy turns on the meaning of the words "whole insurance," as used in the apportionment clause of the defendant's policy. It

was there provided that the defendant should not be liable for a greater proportion of any loss than the amount insured by its policy should bear to the whole insurance on the property. There is no disagreement as to the amount of insurance made by the defendant's policy, which was absolute, but the controversy is over the amount made by the four other policies, which were not absolute, owing to the co-insurance clause. The defendant claims that the whole insurance was $60,000, comprising the $42,500 made by its own policy and $17,500, or the greatest sum for which, in any event, the four companies could become liable, and that the plaintiff was a co-insurer to the extent of the difference between the amount for which they are liable and the maximum amount for which they might be liable. This would reduce the indemnity furnished by the defendant's policy from $38,177.26, the amount claimed by the plaintiff, to $32,102.50, the amount paid by the defendant. The plaintiff claims and the Appellate Division held, that under the circumstances "the amount of insurance effected by the four policies is identical with the amount of the loss, and that the extent of that insurance could not be ascertained until after a loss, for the insurance was to an amount not exceeding a stipulated sum, and was, therefore, indefinite." This conclusion gives no force to the apportionment clause in the defendant's policy where construed in connection with the co-insurance clause of the other policies. Moreover, all five insurance policies, including that issued by the defendant, are indefinite in the same way, for they all make insurance to an amount not exceeding a sum named which is usually regarded as the amount of insurance effected. The four companies stipulated that they should "be liable for no greater proportion" of the loss, which was $45,321.18, "than the sum hereby insured," or $17,500, "bears to 80 per cent. of the cash value of the property," which was $99,728. Their liability, therefore, is represented by the following proportion: As $99,728 is to $17,500, so is $45,321.18 to the amount required, or $7,952.84. Was this "the whole insurance" effected by the four policies containing the co-insurance clause? If so, that clause has no effect in this case. We think it was not, for, if the loss had been greater the amount called for by the policy would have been greater also, and yet it could not have exceeded the amount of the insurance. The largest sum which, in any event, can be collected under a policy, and not the smaller sum which may be col-

lected under special circumstances, is the amount of insurance effected by the policy. There is no limit to the possible liability under the four policies, except the amount that the companies stipulated it should not exceed, aggregating $17,500, which they would have been obliged to pay if the loss had been total. Under an open policy, if the loss is less than the insurance, the former measures the liability; but if the loss is greater than the insurance, the latter measures the liability; yet in either event the amount of insurance is the same. The amount of insurance, therefore, is the largest sum that the company, under the circumstances, according to the terms of their policy, can be required to pay. This is the popular understanding, as well as the legal definition. The test is, what is the extent of the indemnity furnished under any possible circumstances. The insurance effected by the four policies was for a proportion of the cash value of the property less 20 per cent., which can always be represented by a fraction, the numerator being unchangeable, while the denominator may vary from time to time. The numerator is the highest amount which the companies could be required to pay, while the denominator is 80 per cent. of the cash value of the property. The amount of the insurance does not vary, but the cash value of the property is subject to change; still that change does not reduce the amount of insurance. The fact that the owner ran his own risk or became his own insurer as to the 20 per cent. of the cash value of the property, did not lessen the amount of insurance, because, if the loss had been total, the whole $17,500 would have been due upon the four policies. Thus the effect of the co-insurance clause is that, if the property is insured to 80 per cent. of its value or more, in case of a total loss the whole sum insured becomes due; but with insurance for less than 80 per cent. of the value, and a loss also of less than 80 per cent., the owner becomes, in effect, a co-insurer proportionately. He could have procured insurance to 80 per cent. of the value, but, not having done so, he became his own insurer pro tanto. This accords with the way the clause is characterized in the policies, for it is entitled "Percentage Co-Insurance Clause," which means insurance by the company and the owner, depending upon the percentage or proportion which the insurance bears to the value. The object is through lower premiums to induce the owner either to take out insurance to 80 per cent. of value, or to become a co-insurer with less risk to the company

in case of a loss falling below such percentage of value. Where either the loss or the insurance equals or exceeds 80 per cent. of value, the clause has no effect, but when both are less the insured and the insurer bear the loss in certain proportions. The amount of insurance is not the variable factor, but the amount of loss. The amount of insurance is at all times the same, but when the loss is partial the insurer stands only a part, unless the insurance is for the full percentage, whereas, if the loss is total, the insurer stands all, not exceeding the limit stated in the policy. That limit is the amount of insurance made by the policy, because the company may be required to pay to that extent. The words of the co-insurance clause, viz., "the sum hereby insured," indicate the amount of insurance. That sum is fixed, definite, and always the same. It should not be confounded with the actual liability under special circumstances, for all open policies are necessarily indefinite as to the sum to be paid until the amount of the loss is known. The liability can never exceed the value of the property, but the insurance may, for a house worth but $1,000 may be insured for $2,000. If thus insured by two companies, one-half in each, and the property was wholly destroyed by fire, neither would have to pay $1,000, the amount of its policy, but only $500, the amount of its liability, owing to the apportionment clause. This would be true of a standard policy, even if one of the companies was insolvent, so that the insured, by taking out other insurance, may reduce his security while intending to increase it. In the case before us the plaintiff, by procuring the four policies, reduced his security in the event of a partial loss, but increased it in the event of a total loss. For the purpose of apportionment, the face values of the policies should be resorted to, regardless of the cash value of the property, and thus the whole amount of insurance can be ascertained by a simple inspection of the policies. The face value of a policy is not reduced by the actual value of the property, or by the duty of apportioning the loss, or by the effect of a co-insurance clause in another policy on the same property. The amount of insurance is fixed at the inception of the policy, but the amount of liability is not fixed until a loss has occurred. The one depends upon the sum for which the policy is written, but the other depends upon a number of contingencies which may or may not happen, and hence can not be known in advance. The fact that they are known, and may

never come into existence, does not affect the amount of the policy. The question involved is new, and we are without controlling authorities to guide us, but the discussion of a subject somewhat related in a recent case has aided in reaching the conclusion announced. Continental Ins. Co. vs. Aetna Ins. Co., 138 N. Y. 16, 21, 33 N. E. 724.

It may be asked why, if the whole insurance was $60,000, the plaintiff is not entitled to recover his entire loss, which was but $45,321.18; and the answer is that he agreed in a certain contingency to stand part of the loss himself. He accepted four policies, which provided for the payment to him of not exceeding $17,500 in case of a total loss; or in case the loss was partial, and his insurance amounted to 80 per cent. of the cash value; but he agreed that, if both loss and insurance were each less than the 80 per cent., to take less than the amount of his loss, and thus became a co-insurer for the difference. The defendant, pursuant to its apportionment clause, is entitled to the benefit of all other insurance, whether made by another company alone or by a contract between another company and the insured, by which, in case of partial loss, each stands part as a co-insurer. We think that the "whole insurance" was $60,000, the face value of all the policies, and that the judgment appealed from should, therefore, be reversed, and judgment ordered for defendant on the merits, with costs.

PARKER, C. J., and GRAY, O'BRIEN, MARTIN, CULLEN, and WERNER, J. J., concur.

Judgment reversed.

IMPORTANT APPORTIONMENT DECISION.

Isaac Stephenson et al., Exrs., etc.,
Appellants,
vs.
Agricultural Insurance Company of Watertown, New York, et al.,
Respondents.

Appeals from the Circuit Court for Milwaukee County.

Plaintiffs' testator took out insurance on a building situated in the city of Milwaukee, Wis., as follows: Agricultural Insurance Company of Watertown, N. Y., $5,000; Liverpool and London and Globe Insurance Company, $5,000; Continental National In-

surance Company, $5,000; Prussian National Insurance Company, $2,500; Northwestern National Insurance Company, $5,000; Milwaukee Fire Insurance Company, $5,000, and the Milwaukee Mechanics' Insurance Company, $7,500, the policy of the latter company, however, containing a provision requiring insurance to be kept upon the property to the amount of 80 per cent. of the actual cash value thereof, and providing that in case of a failure so to do, and a fire occurring, the liability under such policy should be limited to the amount that would be apportioned thereto in the event of the full amount of insurance being carried. The language of the policy in regard to the matter was as follows:

"At the option of the assured, and in consideration of the reduced rate of premium charged for this policy, the assured hereby agrees to maintain insurance during the life of this policy, upon the property hereby insured, to the extent of eighty (80) per cent. of the actual cash value thereof, and it is mutually agreed that if, at the time of the fire, the whole amount of insurance on said property shall be less than such eighty (80) per cent., this company shall, in case of loss or damage less than such eighty (80) per cent., be liable for only such portion thereof as the amount insured by this policy shall bear to said eighty (80) per cent. of such actual cash value of such property."

Other than that stipulation, all of the policies were alike. The form thereof was that of the standard policy of this state, one of the provisions being, in accordance with 1941-58 R. S. 1898, as follows:

"This company shall not be liable under this policy for a greater portion of any loss on the described property or for loss by and expense of removal from premises endangered by fire than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss may be provided for by agreement or condition written hereon or attached or appended hereto. Liability for reinsurance shall be as specifically agreed hereon."

While all the policies were in force, the property insured was damaged by fire to the amount of $14,169.50. The actual cash value thereof, when the fire occurred, was $94,000. Default was made by some of the companies as to paying their respective proportion of the adjusted loss. Suits were thereupon

brought against them, respectively, as follows: Against the Agricultural Insurance Company for $2,319.33, with interest; against the Liverpool and London and Globe Insurance Company, for the same amount; against the Continental Insurance Company, for a like amount; against the Prussian National Insurance Company, for $1,159.66.

The only issue made by the answers, litigated and required to be reviewed upon these appeals, is as to whether the total amount of the insurance on the building when the fire occurred was $35,000 or $30,546.55. In the complaint the latter amount was alleged to be correct, while in each of the answers the former was insisted upon. Plaintiffs claimed that the $7,500 policy, so-called, was in fact, by force of its limitation clause, reduced in proportion to the amount of the deficiency of insurance on the property under the 80 per cent. clause of the policy.

Defendants claimed that the policy should be counted at its face, $7,500, in apportioning the loss. The trial court decided in favor of the latter view, and ordered judgments accordingly, which were rendered, one against each of the companies. A separate appeal was taken from each of such judgments.

Marshall, J.: This appeal calls for the solution of two questions concerning the construction of significant words in this part of Section 1941-58, R. S. 1898:

"This company shall not be liable under this policy for a greater proportion of any loss on the described property * * * than the amount hereby insured shall bear to the whole insurance, whether valid or not."

These are the questions: 1. Do the words "amount hereby insured" refer to the face of the policy—the maximum amount of risk assured under any or all circumstances? 2. Do the words "whole insurance" refer to the aggregate of the maximum risks assumed by all insurers in respect to the property? Affirmative answers will lead to an affirmance of the judgments.

Courts elsewhere have had the subject before us up for consideration to some extent. In respondents' favor we are referred to Armour Packing Co. vs. Reading F. Ins. Co., 67 Mo. App. Cases, 215, and Farmers' F. Co. vs. Scottish Union Nat. Ins. Co. 72 N. Y. Supp. 752. The language of the insurance contracts was the same substantially, as here. In the first case the effect of a provision like the 80 per cent. clause of the Milwaukee Mechanics' Insurance Company policy, as regards features of the contract similar to those of our standard policy, required by

Sec. 1941-58, R. S. 1898, was considered. It was to the effect that in case of a loss the part apportioned to a particular company should be on a basis of there being insurance on the property to the extent of 80 per cent. of the cash value thereof, and if there was not that amount of insurance in fact, that the loss as to the deficiency should fall on the insured as a co-insurer. The court, in reaching a conclusion, seems to have ignored the plain language in that regard. It held that the liability of the company was the amount of the insurance under the policy; that the amount of the insurance was not the face of the policy, but the face scaled down in proportion to the failure of the assured to comply with the 80 per cent. clause; that the reduced amount was the proper sum to be considered in adding up the "whole insurance" and in apportioning the loss between the several companies concerned so as to give the assured full indemnity for his loss within the range of the policies. That cast a burden on some of the companies which the assured expressly stipulated to bear himself, receiving a consideration therefor in the form of a reduction of the premium paid. In the second case the court held that the amount of insurance was synonymous with the amount of the loss, and the latter synonymous with the liability; that a determination of the amount of the insurance necessarily waited upon the adjustment of the loss. "It might not be," said the court, "the maximum amount named in each of the policies. How much insurance was effected by each policy depended upon the sound value of the property covered at the time of the loss, diminished by 20 per cent." The policy contained a clause similar to that in those under consideration here, and required by Sec. 1941-43, R. S. 1898, fixing the amount of the insurance at a sum sufficient to cover all loss not exceeding a specified amount. The words "and not exceeding," etc., specifying the maximum amount of the risk assumed, inclined the court to hold that the true amount of the insurance was determinable only in the event of a loss. We can not agree with that view. It seems to violate the plain meaning of the language of the policies. We will endeavor to show that such is the case.

In that part of the policy corresponding to Sec. 1941-43 *id.*, the word "loss" is used, but not as a limitation upon the amount of the insurance, but primarily as a limitation upon the amount of the liability. This is obvious, since payment of one loss does not cancel the policy unless it equals the maximum

amount of risk assumed. If it is less, it is only a *pro tanto* satisfaction of the policy. The company remains liable thereafter to be called upon time after time during the policy period, the policy being kept alive by compliance with its provisions, till an amount equal to the face thereof shall have been paid. It must follow that the amount of insurance effected by a policy is one thing, the amount of the loss in any particular instance another, and the liability to pay on account thereof another. The amount of the insurance is the maximum amount of the risk assumed —the face of the policy; the amount of the loss is the adjusted damage by fire to the property covered by the policy; the amount of the liability as to any particular loss is the amount of the adjusted damages properly apportionable to the policy.

What has been said as to what constitutes the amount of the insurance under that part of the standard policy as regards Sec. 1941-43, R. S. 1898, applies to that part embodying Sec. 1941-58 *id.* Note the plain distinction in the latter section between "amount hereby insured," or "whole insurance," and "loss": "This company shall not be liable under this policy for a greater proportion of any loss * * * than the amount hereby insured shall bear to the whole insurance." To say that the terms "liability," "loss" and "amount insured," or "whole insurance," are synonymous, or that the amount of the insurance is undeterminable in advance of loss, is well-nigh, if not quite, absurd. The language of the section as a whole is too plain to admit of any resort to rules for judicial construction to determine its meaning. As indicated, "loss" refers to the damages of the assured measured in money; "liable," or liability, to the amount of such loss which the sufferer, under the insurance contract, may recover upon the policy, and "amount hereby insured" to the risk assumed under the policy—the amount which, regardless of any loss paid, remains subject to be drawn upon from time to time to satisfy other losses till it shall have been wholly exhausted.

The amount insured on the face of the Milwaukee Mechanics' Insurance Company policy is $7,500. It was not competent for such company to limit its liability so as in any way to vary the insurance contracts made by respondents. We are unable to see any evidence in its policy of an attempt to do so, or anything out of harmony with the conclusion we have come to. The policy contains the same language as the other policies respecting the risk assumed. It

was limited to a particular sum, $7,500, coupled with a condition requiring the assured to carry insurance upon the property to the amount of 80 per cent. of the cash value thereof or to be deemed himself an insurer for the deficiency. That is the effect of the 80 per cent. clause. The maximum amount of the risk was $7,500. The amount of its liability, as between it and the assured, but not as between it and the other companies, was affected by the 80 per cent. clause. The language of the policy indicates that the contracting parties understood the result of a failure by the assured to take out sufficient insurance to equal 80 per cent. of the cash value of the property would not be a reduction of the amount of insurance affected by the policy, but such a division of any loss apportioned to $7,500 out of the whole insurance between the company and the assured as would make him bear the burden that would otherwise be cast upon it by his failure to take out insurance up to the limit specified. The words "amount of insurance" and "amount insured" are used in the 80 per cent. clause in a way to clearly indicate that they refer to the maximum risk assumed, the $7,500. Here is the language: "If, at the time of the fire, the whole amount of insurance on said property shall be less than 80 per cent., this company shall, in case of loss or damage less than said 80 per cent., be liable only for such portion thereof as the amount insured by this policy shall bear," etc. There can be no mistaking the connection between the significant words in that clause and the maximum risk assumed by the company and by all the companies.

There is abundance of authority supporting the conclusions that "amount hereby insured," and similar expressions as regards a particular policy, mean maximum amount of risk assumed; that "the whole insurance," and similar expressions as to any given parcel of property covered by several policies of insurance, with or without a limitation of liability clause similar to the one in the Milwaukee Mechanics' Insurance Company policy, mean the aggregate maximum risks assumed under all the policies; that such a limitation of liability clause in a policy does not operate to vary the terms of any other policy, and that the effect of such a clause, and the contractual purpose thereof, is to make the insured a co-insurer to the extent that he fails to place the whole insurance specified. We will mention in the main only cases cited by respondents' counsel: Oshkosh Gas Light Co. vs. Germania Ins. Co., 71 Wis. 457; L. and

L. and G. Ins. Co. vs. Verdier, 35 Mich. 395; Page vs. Sun Ins. Office, 74 Fed. 203; Chesbrough vs. Home Ins. Co., 61 Mich. 333; Haley vs. Dorchester M. F. Ins. Co., 12 Gray, 545; East Texas F. Ins. Co. vs. Coffee, 61 Tex. 287; Good vs. Buckeye M. F. Ins. Co., 43 Ohio St. 394; Bardwell vs. Conway M. F. Ins. Co., 118 Mass. 465; Christian vs. Niagara F. Ins. Co., 101 Ala. 634. In the last case cited the court referred to the feature of insurance contracts making the assured a co-insurer as reasonable, and one that should be enforced by courts, rather than avoid by any attempt to read out of it a justification for a different course by rules of judicial construction. In Chesbrough vs. Home Ins. Co. there was a limitation of liability clause, similar in all respects to the one in this case, and the court treated the amount of insurance affected by the policy, in apportioning the loss between different companies, as the face thereof; but, as between such company and the assured, held that the latter should bear, as a co-insurer, any loss not regularly insured against by reason of his failure to take out the full amount of insurance agreed upon.

Our attention is called to the language in 1943a, prohibiting the issuance of any policy containing any provision limiting the amount to be paid in case of loss below the actual cash value of the property, if within the amount of insurance for which premiums are paid, and prohibiting the use of any co-insurance clause or rider except under certain conditions mentioned. We are unable to see how such section applies to this case. The policies issued by respondents were free from the prohibited features. They contain only features expressly required by the standard policy law. The circumstances preventing appellants from obtaining full indemnity was the Milwaukee Mechanics' Insurance Company policy, containing a limitation of liability clause pursuant to 1943a, and the assured's election to exercise the option therein stipulated for to carry a part of the insurance himself.

The claim is made that by taking the policies together the assured was entitled to full indemnity, and language to that effect is quoted from Sherman vs. Mad. Mut. Ins. Co., 39 Wis. 104. This part of the argument of appellants' counsel is infirm in this: it fails to give weight to the fact that in the case cited the court held that the assured was entitled to full indemnity because that was what he paid for and did not stipulate away. Here the assured did stipulate that he would himself bear such part of the loss

apportioned to $7,500 of the whole insurance as should not be collectible of the Milwaukee Mechanics' Insurance Company by reason of the co-insurance clause of its policy. To that extent he stipulated away the right to full indemnity and received the consideration therefor, as we have before indicated. That no part of such consideration went to enrich the respondents makes no difference, since their own premium rates were made with reference to the clause of their policies limiting their liability to such proportion of any loss as the amount of the insurance taken by them, respectively, bore to the whole insurance on the property. They must be held liable according to their own contracts, and no further, the same as was held in Sherman vs. Madison Mut. Ins. Co., *supra*.

It follows from the foregoing that the questions suggested that the opening of this opinion must be answered in favor of respondents and the judgments appealed from affirmed.

By the court: So ordered.

"RICE'S RULE."

The following communications have a direct or indirect bearing on the rule for apportionment of non-concurrent insurance, known as "Rice's Rule":

AN APPORTIONMENT PROBLEM ANALYSIS. An Interesting Exposition of an Apportionment Problem, by Willis O. Robb.

New York, November 19, 1903.

Eugene Cary, Esq., Manager German-American Insurance Company, Chicago, Ill.:

Dear Sir—Your letter of the 9th inst., addressed to President Kremer, of the German-American, and enclosing statement of facts involved in a disputed apportionment which your own and other offices desire to have submitted to me for determination, has been forwarded by Mr. Kremer.

The elements of the problem as you give them are as follows:

	Value.	Loss.	Specific Insurance.
Building A	$5,200	$3,854	$3,000
Building B	5,070	3,380	2,000
	$10,270	$7,234	$5,000
Buildings A and B, blanket insurance			4,000
Total insurance			$9,000

You say nothing about co-insurance, but presumably the policies do not have full co-insurance clauses, at least.

The only apportionment for double non-concurrent cases of this kind that the strict language of the contribution clause of the standard policy will justify is one that many courts, and many insurance companies also, hesitate to adopt because it fails to indemnify the insured fully, despite the excess of insurance over loss. But the contribution clause seems to me to be plain in its bearing on this problem, and under it the apportionment in the case you have submitted would be as follows:

$3,000 specific insurance on A pays 3-7 of $3,854, loss on A, or	$1,651.71
$2,000 specific insurance on B pays 2-6 of $3,380, loss on B, or	1,126.67
$4,000 blanket insurance on A and B pays 4-9 of $7,234, loss on A and B	3,215.11
Total recovery	$5,993.49
Insured loses	1,240.51
Whole loss	$7,240.00

In this way, and in this way only, each company will pay no greater proportion of the loss on the property it covers than its amount constitutes of the whole insurance thereon. And that is the clear limit of liability fixed by the contribution clause.

In the case of the Farmers' Feed Co. vs. Scottish Union and National Ins. Co., reported on page 162, "Insurance Law Journal" for February, 1903, a wholly different point was up for decision, but the court of Appeals of New York, in deciding it, used language that seems to me squarely to cover this whole problem of both single and double non-concurrent apportionments—language that certainly indicates a recation against the practice of violating the plain language of the contribution clause for the sake of relieving the policyholder from this consequence of a blunder that is almost always his own or his broker's, not that of the companies, who have warned him against it in large print on the outside of their policies. The court said:

"The decision of the controversy turns on the meaning of the words 'whole insurance' as used in the apportionment clause of the defendant's policy. It was provided that the defendant should not be liable for a greater proportion of any loss than the

amount insured by its policy should bear to the whole insurance on the property. * * * The plaintiff claims that the Appellate Division holds that under the circumstances the amount of insurance * * * could not be ascertained until after a loss. * * * This conclusion gives no force to the apportionment clause in the defendant's policy. * * * The largest sum which in any event can be collected under a policy, and not the smaller sum which can be collected under special circumstances, is the amount of insurance effected by the policy. * * * The amount of insurance, therefore, is the largest sum that the company under any circumstances, according to the terms of the policy, can be required to pay. * * * We think that the 'whole insurance' was $60,000, the face value of the policies. * * * It may be asked why, if the whole insurance was $60,000, the plaintiff is not entitled to recover his entire loss, which was but $45,321.18, and the answer is that he agreed in a certain contingency to stand part of the loss himself."

This case is, on its face, a controlling precedent only for apportionments involving some policies with and some without a co-insurance clause, which was the condition actually before the court. But to me, at least, the language here quoted seems perfectly and unquestionably applicable to the familiar problem of double non-concurrent apportionments, of which the case you have referred to me is a typical instance. If, therefore, the insured were a party to his submission, and there were no binding stipulations to the contrary, I should not hesitate to apportion the loss as above, believing that no other apportionment will give effect to the plain language of the contribution clause. But as the insured is not a party to the submission in this case, I assume that the companies are disposed to waive their rights to the apportionment above indicated, and that they mean to pay, among them, the whole loss, according to any division I may recommend for that purpose.

Rules Do Not Apply.

I may as well say at once that none of the many rules offered for the solution of this modified form of the problem, either by the numerous courts of law or by the still more numerous lay authorities who have dealt with it, seems to me to be capable of logical analysis or universal application, and for the reason that they are all makeshifts and cowardly

substitutes for the one simple and literal rule prescribed by the policy language, and already applied above. But among these makeshifts I have some preferences and some distinct antipathies which have guided me in deciding such cases as have been submitted to me under the limitation I assume to exist in the present instance.

The rule of gradual reduction, as I may term it, by which the blanket policy is made to contribute first on its whole amount, along with any specific insurance applicable, to pay the loss on one item—usually that where the loss is heaviest, either actual or in proportion to the amount of specific insurance—and then with its balance in like manner in the next item, and so on, is unquestionably the one that has greatest currency among adjusters and loss clerks. The merit claimed for it is the rule that makes the insured's indemnity go furthest. This rule was adopted by the Supreme Court of Errors of Connecticut, in Schmaelzle vs. Lancashire Fire Ins. Co. The rule, however, is absolutely vicious in theory and in practice—as a specimen of policy interpretation, and as a measure of justice. Like the old Albany rule, which makes the blanket policy contribute on its full amount with each of the specific insurances, it sacrifices the blanket policy by making it contribute, not once, as the contribution clause requires, but again and again, on at least a portion of the same limit of liability. Moreover, when the blanket policy has a co-insurance clause, as it has more than nine times out of ten nowadays, this rule is precisely the one that soonest sacrifices the insured by trying to saddle on that policy a loss that the inevitable application of the co-insurance clause will cut in two and let him collect only a portion of it—maybe the smaller portion, at that. I therefore repudiate the doctrine of the Schmaelzle case, utterly and unreservedly, its conclusions, its reasonings and its implications all and several.

An extreme plausible modification of this gradual reduction rule is one that is sometimes applicable to two or more building items, but not to items comprising, for example, building, machinery and stock. It makes the blanket policy contribute first on building where fire started, then with its remainder on the building next attacked, etc. Unquestionably, if two or three successive and independent fires, separated by intervals of a day or even an hour, occurred in the several buildings, that apportionment would

be right; but this analogy, which is relied on by the advocates of the rule, is really very defective, just because one fire and one resulting loss under a policy are both mathematically and practically different from two cases where the damage in one building was all done before the fire attacked the next one, and so on.

All things considered, I am quite clear that any division of the blanket policy for contribution to the several losses, however imperfectly arrived at, is preferable to the Albany rule, or to either form of the gradual reduction rule just given. And of the various rules for dividing the blanket policy, the two leading ones are the Reading rule, which divides it in the ratio of the valuables of the several classes of property covered by it, and the Finn rule, which divides it in the ratio of the several losses instead. The Reading rule was adopted by the Supreme Court of Vermont, in Chandler vs. Ins. Co. of North America, in a curt and confident opinion that ignores, perhaps from real ignorance of, all the struggles of the judicial and lay intellect with this problem for the greater part of a century, and treats it as if it were a newly invented but very futile snare, specially set for the feet of justice, in her blindfold progress through the Green mountains. The Finn or Griswold rule, rechristened in recent years the Kinne rule, is warmly advocated by Mr. Daniels in his little tract on apportionment, published a year or two ago. I do not consider either rule sound or safe. I am of opinion that where the blanket policy has no kind of co-insurance clause it should be divided as a rule in which not values at all and not losses alone, but the relation between losses and insurance, is the determining factor, and that where it has a co-insurance clause of any kind, then the division should be determined, not by the losses at all and not by values alone, but by the relation between values and insurance. The Reading rule is wholly wrong unless there is a co-insurance clause in the blanket policy, and not quite right then. The Finn or Kinne rule is always theoretically unsound and often practically absurd where the blanket policy has a co-insurance clause, as it now almost always has; and even where there is no such clause the rule is defective, as was clearly shown by the late Edward F. Rice, of the Aetna, in his remarkable paper on "Contribution in Fire Losses," published in the proceedings of the Fire Underwriters' Association of the

Northwest in 1880, a paper which almost everybody seems to have forgotten now, but which is extremely well worth reading still.

Mr. Rice proposed to substitute a most ingenious rule, which for many years I used in cases not involving the presence of a co-insurance clause, and, on the whole, with satisfaction. Assuming that each specific policy has an equal right with the others to contribution from the face of the blanket policy, but that these several rights are conflicting and irreconcilable, Mr. Rice would ascertain that the over-insurance or salvage, *i. e.*, excess of insurance over loss, would on each item, if the face of the blanket policy were applied to each in turn. Then he would so divide his blanket policy that its several divisions, when added to the several over-insurances (defined as before), bear the same ratio to each other that they would if each item got the benefit of contribution from the face of the blanket policy. In other words, he treated the problems as one in the apportionment of salvage, and therefore divided the actual aggregate salvage, or excess of insurance over whole loss, in the same ratio that the separate salvage or over-insurance would bear to each other if the blanket policy covered for its full amount on each item. The rule is not so hard to apply as it sounds, and the longer one examines it and tests it by application to concrete cases, the more likely one is to approve of it. And, at any rate, it is fundamentally and unassailably sound in assuming that it is not primarily the blanket policy, but the whole excess of insurance over loss, that is to be divided; the final division of the blanket policy being determined by that consideration.

On the whole, however, I now prefer, in the rare cases where there is no co-insurance clause at all on the blanket policy, and so where the loss and not value is the proper determining factor, to simplify this rule, and to change its basis by substituting percentages for amounts in dealing with the salvage to be apportioned. My rule in such cases is simply to divide the blanket policy, so that whenever possible and as nearly as possible, the ratio of insurance to loss shall be the same on all items. This is cutting the Gordian knot with a vengeance, for it usually results and would result in this case in making all policies pay the same percentage of their face amounts. Why not? The aggregate insurance exceeding the aggregate loss, and much of this insur-

ance being of the floater variety, available where needed, and the insured having no needs or preferences to consult, why should not the insurers take pot luck, and share the salvage pro rata?

(But when there are co-insurance clauses on the policies, and especially on the blanket policies, the division must be determined primarily by values, not losses; also, theoretically and often practically you may expose the insured to loss as a co-insurer on a particular item, when he has plenty of insurance in the aggregate to relieve him of that hardship, and much of it available wherever needed. Here the logic of the situation is simply to so divide the blanket policy that its division, when added to the respective specific insurance, will, when possible and as nearly as possible make the insurance on each item bear the same ratio to the value thereof as the aggregate insurance on all items bears to the aggregate value of all, so that a man who has an aggregate of 80 per cent. insurance (or 50 per cent., or 120 per cent.) shall, if possible, get credit just for that percentage on each item, and suffer or escape suffering accordingly.)

Under these two rules, the first of which I would prescribe if there are no co-insurance clauses on any of the policies, and the second if there are such clauses, the results of the apportionment in your case would be to make all policies pay $804.22 per $1,000 of insurance, in the absence of the co-insurance clause, and to make the aggregate payments as follows, if the insurance clause is present:

Co.	Building "A" Insurance	Pays	Building "B" Insurance	Pays	Totals Insurance	Pays
1	$1,000.00	$803.78	.....	.....	$1,000.00	$803.78
2	2,000.00	1,607.56	.....	.....	2,000.00	1,607.56
3	.....	.....	$1,000.00	$803.78	1,000.00	803.78
4	.....	.....	1,000.00	803.78	1,000.00	803.78
5	448.72	360.67	551.28	443.11	1,000.00	803.78
6	448.72	360.67	551.28	443.11	1,000.00	803.78
7	448.71	360.66	551.29	443.11	1,000.00	803.77
8	448.71	360.66	551.29	443.11	1,000.00	803.77
Totals	$4,794.86	$3,854.00	$4,205.14	$3,380.00	$9,000.00	$7,234.00

Mr. Rice's rule would have made companies 1 and 2 pay $800 per $1,000; companies 3 and 4, $808.14 per $1,000, and companies 5, 6, 7 and 8, $804.43 per $1,000; his rule and the one of mine, which assumes no co-insurance clauses to be present, working out almost identical results for this problem, while my rule based on co-insurance clause varies from the other two but very slightly in its outcome.

According as the co-insurance clause is present or absent in case submitted, the companies are therefore recommended (reversing the proverbial order of exercises) to take their choice and pay their money, in accordance with one or the other of the two rules here stated. But I would ask them all to remember that all of these rules are arbitrary, illogical and more or less unjustifiable substitutes for the plain word of the contract, which is as interpreted at the beginning of this letter; and to join with me in expecting and working for the time when all the courts and all the adjusters will in all such cases give the same force and effect to the clear language of the contribution clause that they now give, for example, to that of the co-insurance clause.

Yours very truly, Willis O. Robb.

APPORTIONMENT AND CONTRIBUTION OF NON-CONCURRENT INSURANCE.

April 20, 1905.

Editor "Rough Notes":

On the 31st day of last March you published a communication from Willis O. Robb, an adjuster of fire losses, of New York, addressed to Eugene Cary, manager of the Western department of the German-American Insurance Company, which was his (Mr. Robb's) solution of an adjustment problem submitted to him for his consideration, where the different companies involved could not agree on a rule for the apportionment and contribution of non-concurrent insurance.

I have very carefully read and studied this communication, and it has interested me exceedingly much. I am very much pleased to know that you are publishing the different rules which have lately been used and are being used in the adjustment of these complicated problems of non-concurrent insurance. I anticipate that the publication of such carefully prepared communications, and a proper and reasonable discussion of this subject in the insurance

press, will bring the various features of the contribution of non-concurrent insurance forcibly to the attention of the fire insurance people, and that, in the near future, it will result in all, or nearly all, of the fire insurance companies adopting some general rule for use in the United States in these cases, and thereby terminate the controversy which arises, in nearly every case, between the adjusters, and make it unnecessary for the assured to go to the courts and be put to great trouble, expense and waste of time to secure an adjustment of his claim.

The problem submitted to Mr. Robb and made the basis of his communication was as follows:

Statement.

Property.	Sound Value.	Loss.	Specific Insurance.
Building A	$5,200	$3,854	$3,000
Building B	5,070	3,380	2,000
Totals	$10,270	$7,234	$5,000
Compound insurance on Buildings A and B			4,000
Total insurance			$9,000

Mr. Robb says: "The only apportionment for double non-concurrent cases of this kind that the strict language of the contribution clause of the standard policy will justify, is one that many courts and many insurance companies, also, hesitate to adopt, because it fails to indemnify the assured fully, despite the excess of insurance over loss. But the contribution clause seems to me to be plain in its bearing on this problem, and, under it, the apportionment in the case you have submitted would be as follows: $4,000 blanket insurance on A and B pays four-ninths of $7,234, loss on A and B, or $3,215.11."

There is no doubt about this proposition that $3,215.11 is the correct and the legal liability of the $4,000 compound insurance.

Pro Rata Contribution Clause.

"This company shall not be liable under this policy for a greater proportion of any loss on the described property * * * than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers, covering such property."

The compound insurance covers to the extent of $4,000 on both buildings, and as the specific insurance on the two buildings is $5,000, we have a total of $9,000 on buildings A and B. When we apply the pro rata contribution clause, we find that 4000-9000 of $7,234, the total loss, is $3,215.11. This application of the clause ought to end any and all argument as to the liability of the compound insurance. The courts do not stand by this clause where there is non-concurrent insurance, as in this case.

Mr. Robb says, in this connection, regarding the liability of the specific insurance: "$3,000 specific insurance on A pays three-sevenths of $3,854, loss on A, or $1,651.71." The specific insurance on buildings A is $3,000, and the loss is $3,854. The compound insurance on buildings A and B is $4,000. Mr. Robb treats the whole of the $4,000 compound insurance on buildings A and B as so much additional insurance on building A, and gets a total of $7,000 on A to pay $8,354 loss. He would apply the same rule to building B and make specific insurance of $2,000 pay two-sixths of the $3,380 loss, or $1,126.67.

I contend that the position he has taken as to the liability of the specific insurance is radically wrong, and it is not in any way substantiated by the pro rata contribution clause.

Mr. Robb says: "In this way, and in this way only, each company will pay no greater proportion of the loss on the property it covers than its amount constitutes of the whole insurance thereon, and that is the clear limit of liability fixed by the contribution clause."

Both of these claims are based on the assumption that the full amount of the compound insurance on buildings A and B is additional insurance on each building. We must now remember that we are considering the question of the whole insurance from the specific, and not the compound, insurance end of the argument. This being the case, the first question that confronts us is, what is the amount of the whole insurance on building A? We know there is $3,000 specific insurance on building A. Mr. Robb contends that all of the $4,000 compound insurance is the other insurance, and that the whole insurance on building A is $7,000. I must emphatically say that, in this case, the whole of the $4,000 compound insurance is not other insurance on building A, because, by the terms of the contract, it covers on

buildings A an B, and there is a loss on both buildings.

The contribution clause limits the total contributing insurance to that "on the described property," and the "described property" is building A. It also limits the "whole insurance" to the amount "covering such property," and this means the amount "covering" on building A, which is all that is meant by the words "such property."

We do not know what proportion of the compound insurance of $4,000, which covers on buildings A and B, covers on building A, and we are therefore driven by necessity to adopt some arbitrary rule for making an apportionment of the compound insurance to determine the proportion of it which, with the $3,000 specific insurance, makes the "whole insurance" on building A. What I have said regarding building A applies, with the same reasoning, to building B.

It is true that the Court of Appeals of New York, in the case of Farmers' Feed Co. vs. Scottish Union and National Insurance Company, said: "The largest sum which in any event can be collected under a policy, and not the smaller sum which can be collected under special circumstances, is the amount of insurance effected by the policy." The court also said: "The amount of insurance, therefore, is the largest sum that the company, under any circumstances, according to the terms of the policy, can be required to pay." The Supreme Court of Wisconsin, in the case of Isaac Stephenson et al. vs. Agricultural Insurance Company, approved in every way the New York decision.

These two decisions do not justify the rule advocated by Mr. Robb to determine the liability of the specific insurance. In the two cases mentioned all policies covered the same property, and in the same way, except that some of them had the 80 per cent. co-insurance clause attached and some did not. The companies whose policy had the limitation clause attached contended that the effect of this clause on a policy, when there were other policies involved, without the limitation clause, was to reduce the amount of insurance named in the policies with the limitation clause attached. The result was to relieve the assured of the restrictive effect of the limitation clause by imposing a greater burden on the policies without the limitation clause. The assured, by accepting policies with the limitation clause attached, deliberately stipulated away some of their rights

which would exist under a plain policy, and the courts in both cases held that they could not so construe the contracts as to relieve the assured of the natural results of their express and deliberate act by placing the burden on the other policies. The case submitted to Mr. Robb is so unlike the New York and Wisconsin cases mentioned herein that it is improper and unreasonable for him to refer to them as justifying his position on the actual liability of the specific insurance on buildings A and B.

We have a loss on each of the two buildings covered by the compound insurance, and therefore the compound insurance covers for all purposes necessary to indemnify the assured on both buildings. The assured has not made any special contracts by which he has stipulated away any of his rights. It is true, his insurance is not concurrent. It is also true that a part of the $4,000 compound insurance covers on building A and a part on building B, and not all of it on building A or all of it on building B. It is not only unreasonable, but absolutely impossible for the $4,000 compound insurance to cover for its full amount, for any purpose, on each of the buildings, at the same time, when there is a loss on both buildings. If it does, then we have the use of the Albany rule fully justified.

The whole difficulty in this problem is to determine the division to be made of the $4,000 compound insurance and ascertain the proportion that should cover on each building for the purpose of paying the losses. Any apportionment made of the compound insurance must be arbitrary, and the most we can expect or wish for under the present conditions is to use the best rule.

What we need is a rule adopted for general use by all the principal fire insurance companies, which will, so far as the companies are concerned, fix a basis for making the compound insurance specific. A rule of any kind for this purpose would not control the acts of the courts, but its use by the leading companies would reduce, to a very large extent, the number of cases of this class reaching the courts. A rule for this purpose would not be binding on the assured, yet if one were approved and applied by all the leading companies, the assured would find very little reason to oppose it; and he would not be anxious, unless it were an aggravating case, to spend his money and be annoyed with a lawsuit, and therefore he would, though at some loss, submit to its

application. I do not favor the use of any rule which fails to pay the loss in full if the total insurance is equal to or more than the loss, when it is necessary to make an arbitrary apportionment and when there are no limitation clauses on the policies.

If, in this case submitted to Mr. Robb, the loss were on building A only, then the liability of the $3,000 specific insurance would be three-sevenths of the loss, and the compound insurance would pay four-sevenths of it. If there were no loss on building A, but the loss was all on building B, the $2,000 specific insurance would pay two-sixths and the compound insurance would pay four-sixths of the loss. The claim that the liability of the specific insurance on each item is the same, whether the loss is on one of the items specifically insured, or on both of them, covered by the compound insurance, is, in my judgment, decidedly wrong and unjust.

The Supreme Court of Iowa, in the case of the Le-Sure Lumber Co. vs. Mutual Fire Ins. Co., held:

"The policy was designed to secure the plaintiff against loss by fire in any or all of the yards to the full amount of the policy. It covered all of the property which was destroyed, and, if it is paid in full, it will not fully compensate the plaintiff for the loss sustained. In ascertaining the amount of insurance, for the purpose of an apportionment, it would be just, in the absence of a stipulation to the contrary, to consider only the insurance on the property injured or destroyed; and it will be presumed, in the absence of a showing to the contrary, that the parties to the contract intended to provide for a just result. The language they used does not necessarily mean that in case of loss the defendant should only be liable for such proportion of it as the amount it insured was of the total insurance on all the property described in its policy, whether the concurrent insurance was on all of the property, or only a part of it. We think a permissible, and the correct, interpretation of the policy is that in case of a loss the defendant was not to be liable for a greater proportion of it than the amount of its policy bore to the total insurance on the property injured or destroyed. It is true, the words 'described property,' if not modified, refer to all of the property covered by the policy, and the phrase, 'covering such property,' is equally comprehensive; but, considered in their relation to the word 'loss' and the purpose for which the policy was issued, we are of the opinion that they

should be held to refer to property which should be injured or destroyed."

In the case of Page Bros. vs. Sun Insurance Office, the United States Circuit Court of Appeals decided:

"The result is that, under a clause in a policy of insurance which provides that the company shall not be liable for a greater proportion of any loss on the property described therein than that which the amount insured thereby shall bear to the whole insurance:

"First. Compound policies, insuring the property described in such a policy, and other property, cover the property so described to their full amount in case of a loss upon the property described in the specific policy, and no loss on the other property described in the compound policies.

"Second. In such a case, the company issuing the specific policy is liable for no greater proportion of the loss than that which the amount of such policy bears to the total amount of both the compound and specific policies covering the property it describes."

I therefore contend that the limit of liability fixed by Mr. Robb for the specific insurance is incorrect; is not in harmony with the pro rata contribution clause; is, in fact, impossible; and that the courts are unquestionably correct when they decline to construe the policy as he suggests. As to his theory of the liability of the compound insurance, I wish to say I fully agree with him that it is only four-ninths of $7,234, the total loss. This construction of the contract ought to be insisted on by the company, and the courts should recognize it, though it may work an injury to the assured.

I wish now to call your attention to the adjustment problem submitted to Mr. Robb, and carefully investigate the two rules which he has used, by working the problem out in detail under the application of each rule.

An examination of Mr. Robb's solution of the adjustment problem submitted to him shows that he has one rule for cases where there are no limitation clauses, and another rule to be used when some or all of the policies have a limitation clause attached.

In case there are no limitation clauses on the policies, he says: "My rule in such cases is simply to divide the blanket policy so that, whenever possible and as nearly as possible, the ratio of insurance to loss shall be the same on all items. This is cutting the Gordian knot with a vengeance, for it usually

results, and would result in this case, in making all policies pay the same percentage of their face amounts. Why not? The aggregate insurance exceeding the aggregate loss, and much of this insurance being of the floater variety, available where needed, and the assured having no needs or preference to consult, why should not the insurers take pot luck, and share the salvage pro rata?"

Apportionment without Limitation Clauses.

Co.	Building "A" Insurance	Pays	Building "B" Insurance	Pays	Total Insurance	Pays
1	$1,000.00	$845.73	.....	.....	$1,000.00	$845.73
2	2,000.00	1,691.47	.....	.....	2,000.00	1,691.47
3	.....	.....	$1,000.00	$760.74	1,000.00	760.74
4	.....	.....	1,000.00	760.74	1,000.00	760.74
5	389.24	329.20	610.76	464.63	1,000.00	793.83
6	389.24	329.20	610.76	464.63	1,000.00	793.83
7	389.24	329.20	610.76	464.63	1,000.00	793.83
8	389.24	329.20	610.76	464.63	1,000.00	793.83
Totals	$4,556.96	$3,854.00	$4,443.04	$3,380.00	$9,000.00	$7,234.00

These results are obtained by dividing the total insurance of $9,000 by $7,234, the total loss, which gives a percentage of insurance to loss of 1.244124 plus. This percentage of insurance to loss is multiplied by the total loss on building A, and it gives a total insurance on this building of $4,794.86, from which we deduct the $3,000 specific insurance to get the amount of the compound insurance covering building A, which is $1,794.86. By the same system of figuring we get $2,205.14 as the proportion of the compound insurance covering on building B.

When some or all of the policies have a limitation clause attached, Mr. Robb would, as he says, do as follows: "But when there are co-insurance clauses on the policies, and especially on the blanket policies, the division must be determined primarily by values, not losses; also, theoretically, and often practically, you may expose the insured to loss as a co-insurer on a particular item, when he has plenty of insurance in the aggregate to relieve him of that hardship, and much of it available wherever needed. Here the logic of the situation is simply to so divide the blanket policy that its division, when added to the respective specific insurance, will, when possible and as nearly as possible, make the insurance on each item bear the same ratio to the value thereof as the aggregate insurance on all items bears to the aggregate value of all, so that a man who has an aggregate of 80 per cent. insurance (or 50 per cent., or 120 per cent.) shall, if possible, get credit just for that percentage on each item, and suffer or escape suffering accordingly."

The above rule applied to the problem submitted to Mr. Robb produces the following apportionment and contribution:

Apportionment with Limitation Clause.

Co.	Building "A" Insurance	Building "A" Pays	Building "B" Insurance	Building "B" Pays	Totals Insurance	Totals Pays
1	$1,000.00	$ 845.73	.....	.....	$1,000.00	$ 845.73
2	2,000.00	1,691.47	.....	.....	2,000.00	1,691.47
3	.....	.....	$1,000.00	$ 760.74	1,000.00	760.74
4	.....	.....	1,000.00	760.74	1,000.00	760.74
5	389.24	329.20	610.76	464.63	1,000.00	793.83
6	389.24	329.20	610.76	464.63	1,000.00	793.83
7	389.24	329.20	610.76	464.63	1,000.00	793.83
8	389.24	329.20	610.76	463.63	1,000.00	793.83
Totals	$4,556.96	$3,854.00	$4,443.04	$3,380.00	$9,000.00	$7,234.00

In the claim under consideration we have a sound value of $10,270, and a total of $9,000 insurance. By dividing the total insurance by the sound value, we get a percentage of insurance to sound value of .876338 plus, which, multiplied by the sound value of building A, gives $4,556.96 as the total insurance on building A. If we deduct from this the specific insurance of $3,000, it leaves $1,556.96 as the proportion of the compound insurance covering on building A. If we should use $5,070, the sound value of building B, in the place of the sound value of building A, we get $2,443.04 as the proportion of the compound insurance covering building B.

Under the application of this rule, we get a total insurance on building A of $4,556.96, with a sound value of $5,200. An 80 per cent. co-insurance clause would be inoperative, as the insurance exceeds $4,160, which is 80 per cent. of the sound value. The same is true regarding building B, where the total insurance is $4,443.04 and the sound value $5,070.

I infer from the wording of this rule that the liability of the compound insurance under a limitation clause, if it were operative, would not be determined until after the apportionment of the compound insurance is made, based on the sound value of the two items specifically insured. I think this incorrect. If the total sound value was $15,000, instead of $10,270, the assured, to be fully protected under the 80 per cent. co-insurance clause, should have $12,000 or more insurance. Having only $9,000 insurance, he would be compelled to stand three-twelfths of the loss. This would fix the liability of the $4,000 compound insurance at four-twelfths of $7,234, which is $2,411.33. This does not in any way determine the liability of the specific insurance. The compound insurance must be made specific on some basis to determine the amount of total insurance on each building before we can tell whether the 80 per cent. co-insurance clause is operative or not as to the specific insurance.

The assured who has accepted a policy with an 80 per cent. co-insurance clause attached has stipulated away some of his rights if he fails to have, at the time of fire, insurance equal to or more than 80 per cent. of the sound value, and, if the circumstances are such as to make the limitation clause operative, and it works to the assured's injury, he must suffer. He can not, under any circumstances,

enforce other policies to make good what he loses by the co-insurance clause. It was so held in the two following cases:

Farmers' Feed Co. vs. Scottish Union and National Ins. Co., 65 N. W. Reporter 1105;

Isaac Stephenson et al. vs. Agricultural Ins. Co., January 1903, Wis. Supreme Court.

It is true that in ordinary cases of non-concurrent insurance—that is, where there are no special limitation clauses on the policies—any arbitrary apportionment of the compound insurance would not be approved by the courts if the assured has as much or more insurance than loss, unless the assured is fully indemnified.

The questions involved in a case of non-concurrent insurance, where there is an 80 per cent. co-insurance clause on the compound policies, are not the same as in cases where there are no limitation clauses on them. When the assured accepts a policy with an 80 per cent. co-insurance clause, such as is used in most states; or with an 80 per cent. reduced rate clause, such as is used in Wisconsin; or with an 80 per cent. limitation clause, such as is used in Michigan, attached, he deliberately and specifically stipulates away some of his rights which exist under the printed form of policy, and in most cases now there is a consideration in the shape of reduced cost for this express and specific contract.

After this examination of the two rules, the question very naturally arises: How generally can they be used? In my attempt to determine the matter, I applied them to an assumed case, and I found that both rules were failures when applied to the following assumed adjustment problem. I give herein the assumed case and explain the results as obtained by me when applying the two rules as I understand them:

Statement.

	Sound Value.	Loss.	Specific Insurance.
Stock	$59,000	$1,000	$40,000
Machinery	21,000	20,000	20,000
Totals	$80,000	$21,000	$60,000
Compound insurance on stock and machinery.			10,000
Total insurance			$70,000

If we apply Mr. Robb's rule for the apportionment on the basis of the losses, we would divide $70,000, the total insurance, by $21,000, the total loss, which would give us a percentage of insurance to loss of 3.333333 plus, which, multiplied by the loss on stock of $1,000, gives $3,333.33 as the total specific and compound insurance on stock. This rule applied to machinery gives us $66,666.67 as the total specific and compound insurance on machinery. The specific insurance on stock being $40,000, the application of this rule would transfer $36,666.67 of this specific insurance from stock to machinery. It would be impossible to change the insurance after the fire and make any part of the $40,000 specific insurance on stock cover on machinery.

If we make the apportionment, according to Mr. Robb's rule, on the basis of the sound values, we would divide the total insurance of $70,000 by the total sound value of $80,000, and it gives us a percentage of insurance to sound value of .875, which multiplied by $21,000, the sound value of machinery, gives, as the total specific and compound insurance on machinery, $18,275. This rule applied to stock gives $51,625 as the total specific and compound insurance on stock. The specific insurance on machinery being $20,000, the effect of applying this rule would be to transfer $1,725 of the specific insurance from machinery to stock. It would be impossible to do this after the fire.

Mr. Robb says, when speaking of the application of the rules: "* * * So that, whenever possible, and as nearly as possible, the ratio of insurance to loss (or value) shall be the same on all items." If this means, in cases like this assumed one, to have a reapportionment and transfer bodily $36,666.67 of the $66,666.67 insurance on machinery to stock, and thereby have only the $40,000 specific insurance on stock to pay the loss on stock, it would give the rule a more general application; but in many cases, as in this, the specific insurance on stock would pay the whole loss on this item, and the specific insurance on machinery would pay only two-thirds of the loss on machinery. There is no good reason why the compound insurance should not contribute in this case in payment of a portion of each loss.

These rules, advocated and used by Mr. Robb, are defective the same as many of the others, and that is, they are not susceptible of general application. They can be used in only a limited number of cases.

These cases where they can be used, I think, would be the exception rather than the general rule. If they were such as could be generally used (and produce equitable results), I would not make any objection to them, but, being so much limited in their application, and not producing reasonable and fair results, I do not think they or either of them should be recognized and used. W. H. Daniels.

APPORTIONMENT OF LOSSES UNDER NON-CONCURRENT POLICIES. . . . . .

(Communication.)

July 6, 1905.

Editor "Rough Notes":

I have read with deep interest a communication from Mr. W. H. Daniels, published in "Rough Notes" of April 20th, relative to the adjustment of losses by fire under non-concurrent policies; and I heartily concur in his hope that the discussion of this vexed question may lead to the adoption by most of the fire insurance companies doing business in the United States of a rule for the apportionment of losses under non-concurrent policies, instead of leaving the question to be wrangled over by the adjusters, each contending for the method that will best subserve the interests of the company or companies represented by him, for the occasion, and finally compromised or settled by a majority vote, contrary to the convictions of those who may have advocated a more logical rule to govern the case in question.

It is not creditable to the calling of fire underwriting that some definite rule of contribution between non-concurrent policies, which would produce uniformity of practice, has not ere this been agreed upon and adopted. It must often strike the assured as being incompatible with the idea which the term "Adjusting" is intended to convey when he sees its votaries disagreeing among themselves as to the proper mode of procedure in the settlement of his loss. After all, it is of greater importance that some definite rule be adopted, than as to the particular rule, provided it does not leave the assured short of indemnity with unexhausted general policies in his possession. Of the various methods of apportionment current among adjusters, that which makes the compound policies first pay the loss on any item or items not covered by the specific policies, then float with the loss on the remaining items, provided this furnishes full indemnity (for on principle all

the specific policies are entitled to an equal claim for contribution from the compound insurance in the proportion of the loss sustained by each). If, however, this does not fully indemnify the claimant, and there is general insurance remaining unexhausted, then in such case the compound insurance, after having satisfied the claim upon it for loss upon such item or items not covered by the specific insurance, is made to float with the loss on items of policies having the widest range, and not covered by policies of lesser range, then going back on items covered by specific policies of lesser range, and so on until the compound insurance is exhausted, appeals most strongly to me. For I am one of those who believe that the amount and subdivision of the loss —not the values—govern the liability of the policies covering the property damaged or destroyed, be they specific or compound, and that the values enter as an element into the calculation only when the assured is affected by the conditions of co-insurance, and then only as to the policies containing the co-insurance condition.

I maintain, therefore, that the apportionment between the companies, under whatever rule it may be made, should first be stated as though there were no co-insurance conditions in any of the policies, and then apply the co-insurance to such policies as may contain it. Mr. W. O. Robb, than whom there is no abler adjuster, applies an entirely different rule of apportionment in cases where part of the policies contain the co-insurance clause, from that which he adopts in cases where there is no co-insurance. With due regard for the very high respect which I entertain for his opinion, I am constrained to confess that I am unable to appreciate the logic of his reasoning in the premises. The discussion should be conducted in an academical spirit, however, and we should all be susceptible to conviction. In no other way can we hope to arrive at something to the purpose that will commend it to the consideration of the companies, and receive the sanction of the courts.

Mr. Robb, in his communication to Mr. Eugene Carey, under date of November 19, 1903, favors a strict technical construction of the language of the contribution clause in the standard policy, and he considers that the language of the court in the case of Farmers' Feed Co. vs. Scottish Union and National Ins. Co. justifies such a construction, but he

admits "that many courts, and many insurance companies also, hesitate to adopt it because it fails to indemnify the insured fully, despite the excess of insurance over loss." I agree with Mr. Daniels that the language made use of in rendering its decisions by the Court of Appeals of New York does not apply to the matter under discussion, for it merely decided that $17,500 insurance, containing the co-insurance clause, was to be regarded as other contributing insurance to its full amount in conjunction with $42,500 insurance not containing the co-insurance stipulation. The courts hold with remarkable unanimity to the doctrine that no apportionment of a loss between the insurance companies will be tolerated that shall not give the assured full indemnity while any part of his insurance applicable to the property covered shall remain unexhausted. It is therefore imperatively necessary that this attitude of the courts be constantly kept in view while attempting to formulate some rule that will accomplish the desired end.

In his endeavor to "cut the Gordian knot," Mr. Robb, in cases where there is no co-insurance at all in the blanket policy, adopts a rule by which he divides the blanket policy: "So that whenever possible, and as nearly as possible, the ratio of insurance to loss shall be the same on all items."

The result of this rule in the following example would be as follows: Insurance, $9,000; loss on A, $3,854, and on B, $3,380, which gives insurance on A, $4,794.86, and on B, $4,205.14, for example:

		Loss on A, $3,854		Loss on B, $3,380	
		Ins.	Pays	Ins.	Pays
Company No. 1 specific		$1,000.00	$ 803.78		
Company No. 2 specific		2,000.00	1,607.55		
Company No. 3 specific				$1,000.00	$ 803.78
Company No. 4 specific				1,000.00	803.78
Company No. 5 blanket	$1,000	448.72	360.66	551.28	443.11
Company No. 6 blanket	1,000	448.72	360.67	521.28	443.11
Company No. 7 blanket	1,000	448.71	360.67	551.29	443.11
Company No. 8 blanket		448.71	360.67	551.29	443.11
		$4,794.86	$3,854.00	$4,205.14	$3,380.00

The following would be my method of summarizing the above apportionment, assuming a 90 per cent. co-insurance clause in the blanket policies, and value as given, $10,270:

		Ins.	Pays	Assured under 90% co-insurance 3.768% of loss
Company No. 1	specific	$1,000	$ 803.78	
Company No. 2	specific	2,000	1,607.55	
Company No. 3	specific	1,000	803.78	
Company No. 4	specific	1,000	803.78	
Company No. 5	blanket, Co. Ins.	1,000	773.50	$ 30.28
Company No. 6	blanket, Co. Ins.	1,000	773.50	30.28
Company No. 7	blanket, Co. Ins.	1,000	773.50	30.28
Company No. 8	blanket, Co. Ins.	1,000	773.49	30.28
		$9,000	$7,112.88	$121.12 $7,234 Loss

The foregoing apportionment appears to me very much like robbing Peter to pay Paul, for it results in making the specific in effect blanket as much as the collective, and all pay alike. This is analogous to a practice which has obtained among some of the marine adjusters. In cases of general average adjustments under hull policies which waive the one-third new for old deduction from repairs, after having made the deduction from the general average repairs, they charge back to the hull policies, not only the one-third which they have waived, but also the one-third deduction which, under the law, has accrued to the benefit of the cargo and frieght interests; thus causing the underwriters on hull to reimburse the assured for that part of the deduction which he has had to stand under a separate and distinct contract,with which the underwriter on hull has had nothing whatever to do. Moreover, the underwriters on hull acquiesce in this absurd construction of the waivers in their policies.

The Supreme Court of Errors of Connecticut, in the case of Schmaelzle vs. the London and Lancashire Fire Ins. Co., reported in 33 Ins. L. J. 632, has adopted a somewhat novel method of apportioning a loss between non-concurrent policies. It makes the blanket insurance contribute in its whole amount with the specific on the item upon which the greatest loss has been sustained, then the reduced amount of the blanket goes back and contributes with the specific on the item upon which the next largest loss has been sustained, and so on, following the items in the order of the greatest loss down to the least. In the case before the court, there were compound policies covering all the items, and aggregating the amount of $55,000. There were also covering on the same property specific policies, covering on all the items, in proportionate amounts, aggregating $5,000. It was conceded on all sides that the assured was entitled to complete indemnity in any event. The companies that issued the compound policies contended that their policies should be made to contribute either in the ratio of the losses or in the ratio of the values of the items affected by the loss, there being one small item upon which no loss was sustained (preferably, I suppose, the method that would yield them the greater salvage). The court admitted that the preponderance of authority is in favor of making the blanket insurance float with the loss. It started out with the declaration that: "The policy

expressly states how its liability shall be determined. The question becomes one of contract construction. It is not one of equitable determination in the absence of an agreement." And it quoted the contribution clause in support of this doctrine. Finally it wound up by saying: "In the present case it matters not to the assured, and little to the insurers, what order of adjustment is adopted. The order first indicated, to-wit. that of the greatest losses, is one which, as a general rule, has some considerations in its favor. In this case it works out substantial equity and justice to all concerned. We therefore select it for the purpose of this case, as, on the whole, the best." This looks very much like treating it as a case of "equitable determination in the absence of an agreement."

While blindfolded Justice was endeavoring to hold the scales evenly balanced, she was also blinded to the inconsistency between the two conflicting theories upon which this decision was predicated.

The result of the decision worked out as follows:

Spec. Pols.	Stock, $11,085 Ins.	Stock, $11,085 Pays	Brewery, $15,115 Ins.	Brewery, $15,115 Pays	Machinery, $16,753 Ins.	Machinery, $16,753 Pays	Shed Ins.
$ 5,000	$ 1,839.21	$ 783.29	$ 1,634.88	$ 612.78	$ 1,498.64	$ 444.38	$27.24
Blanket 55,000	24,189.16	10,301.71	14,502.22	14,512.22	16,308.62	16,308.62	
$60,000	$26,028.37	$11,085.00	$16,137.10	$15,115.00	$17,807.26	$16,753.00	$27.24
Summary,	$ 5,000	Pays,	$ 1,840.45				
	55,000		41,112.55				
	$60,000		$42,953.00				

If, however, the specific policies in this case had been reduced 20 per cent., and the general policies had been $40,000, then on the same basis the insurance on machinery would have made a salvage of $720.41, that on brewery a salvage of $518.48, while the insurance on stock and the blanket insurance

would have been exhausted, and the assured would have come short of indemnity $204.68, as follows:

Spec. Pols.	Stock		Brewery		Machinery		Shed
	Ins.	Pays	Ins.	Pays	Ins.	Pays	Ins.
$ 4,000	$ 1,471.37	$ 1,471.37	$ 1,307.90	$ 789.42	$ 1,198.94	$ 487.53	$21.79
Blanket 40,000	9,408.95	9,408.95	14,325.58	14,325.58	16,265.47	16,265.47	
$44,000	$10,880.32	$10,880.32	$15,633.48	$15,115.00	$17,464.41	$16,753.00	$21.79
Summary,	$ 4,000	Pays,	$ 2,748.32				
	40,000		40,000.00				
	$44,000		$42,748.32				

Working out the last example on the basis of the general insurance floating with the loss, we have:

		Stock		Brewery		Machinery		Shed
Spec. Pols.	Ins.	Pays	Ins.	Pays	Ins.	Pays	Ins.
$ 4,000	$ 1,471.00	$ 1,382.88	$ 1,307.90	$ 1,285.05	$ 1,198.94	$ 1,196.57	$21.79
Blanket 40,000	10,322.91	9,702.12	14,075.86	13,829.95	15,601.23	15,557.43	
$44,000	$11,794.28	$11,085.00	$15,383.76	$15,115.00	$16,800.17	$16,753.00	$21.79

Summary.

$ 4,000	Pays,	$ 3,863.50
40,000		39,089.50
$44,000		$42,793.00

This gives the specific policies a salvage of 3.41 per cent., and the blanket a salvage of 2.27 per cent., after having fully indemnified the assured. In striking contrast with the same example worked out by the method adopted by the Supreme Court of Errors of Connecticut.

Making the blanket insurance float with the loss does not invariably produce satisfactory results, however, as the following examples will demonstrate: Company A insures $40,000 on stock; Company B $20,000 on machinery; Company C $10,000 on stock and machinery. Loss on stock $1,000, and on machinery $20,100.

	Totals.		Stock, $1,000.		Machinery, $20,100.	
Co. A specific.....	$40,000	$ 998.29	$40,000.00	$ 988.29		
Co. B specific.....	20,000	13,615.09			$20,000.00	$13,615.09
Co. C blanket.....	10,000	6,496.62	473.03	11.71	9,526.07	6,484.91
	$70,000	$21,100.00	$40,473.93	$1,000.00	$29,526.07	$20,100.00

Reduce the loss $1,000 in the proportions of $900 on stock and $100 on machinery, and we have the anomaly of thereby increasing the loss of Company C about $150, as follows:

	Totals.		Stock, $100.		Machinery, $20,000.	
Co. A specific	$40,000	$ 98.99	$40,000.00	$ 98.99		
Co. B specific	20,000	13,355.48			$20,000.00	$13,355.48
Co. C blanket	10,000	6,645.53	407.96	1.01	9,950.24	6,644.52
	$70,000	$20,090.00	$40,407.96	$100.00	$29,950.24	$20,000.00

As Mr. Rice facetiously expresses it, "A really bright adjuster, perhaps, would find Company C's salvage by magnifying the loss" It is not, therefore, of such comprehensiveness and universal applicability as to render it infallible.

The system advocated in such a masterly manner by the late Mr. E. F. Rice, before the Fire Underwriters' Association of the Northwest, does appear to me to be well worthy of study and analysis, and I commend it to the attention of all those who take an interest in this subject as being based upon sound principles and appearing to be of universal applicability. At least, I have applied it to a great number of cases, with uniformly satisfactory results, except in one, and in that instance Mr. W. O. Robb pointed out that I had misapplied Mr. Rice's method, it being a case of double non-concurrency, and in which Mr. Rice intended to apply his rule in the first instance to the non-concurrent items and then go back with the unexhausted compound insurance to the item covered by all the other policies. I found that the fault had been in me and not in Mr. Rice's rule. This restored my confidence in its universal application, and I believe it affords a solution of this difficult question on scientific principles. The principal objection that I have heard to its general adoption is that it is difficult of application, but this is more fancied than real. A little practice will soon familiarize the student with its operation and render it easy of application. It is based upon the subdivision of the blanket insurance so as to make it cover upon the several items and contribute with the specific in the proportion of the over-insurance on each, distributed according to the maximum over-insurance, which is ascertained by deducting the loss on each item from the sum of the blanket insurance and the specific insurance on that item. The last two of the foregoing examples worked out by Mr. Rice's rule will demonstrate that diminishing the loss in the ratios used in those examples will result in a corresponding reduction in the amounts assessed upon the several insurances—specific and compound—instead of the glaring inequalities produced in those examples:

		Loss on Stock.	Max. Over-Ins.	Over-Ins.	Ins.	Pays.
Co. C specific	$40,000				$40,000.00	$ 959.67
Co. A blanket	10,000				1,680.81	40.33
	$50,000	$ 1,000	$49,000	$40,680.81	41,680.81	1,000.00
		Loss on Mchy.				
Co. B specific	$20,000				20,000.00	14,195.32
Co. C blanket	10,000				8,319.19	5,904.68
	30,000	20,100	9,900	8,219.19	28,319.19	20,100.00
		$21,100	$58,900	$48,900.00	$70,000.00	$21,100.00

The specific insurance on stock is $40,000, to which is added the compound insurance, $10,000, making $50,000, and deducting therefrom the loss on stock, $1,000, gives the maximum over insurance on stock $49,000. The specific insurance on machinery is $20,000, to which add the compound insurance, $10,000, making $30,000, and deducting therefrom the loss on machinery, $20,100, gives the maximum over insurance on machinery $9,900. The entire insurance being $70,000 and the entire loss $21,100, the aggregate over insurance is $48,900, which being divided in proportions of the maximum over insurance on each item, gives over insurance on stock $40,680.81 and on machinery $8,219.19. Add the loss on each item to each of these amounts, will give the insurance on stock $41,680.81 and on machinery $28,319.19. The specific insurance on each item being given, the difference between it and the sum of the insurance gives the compound insurance applying to the item.

Reducing the loss $1,000, viz.: $900 on stock and $100 on machinery:

		Loss on Stock.	Max. Over-Ins.	Over-Ins.	Ins.	Pays.
Co. A specific	$40,000				$40,000.00	$59.99
Co. C blanket	10,000				1,669.47	40.01
	$50,000	$ 100 Loss on Mchy.	$49,900	$41,569.47	$41,669.47	$100.00
Co. B specific	$20,000				20,000.00	14,119.04
Co. C blanket	10,000				8,330.53	5,880.66
	$30,000	20,000	10,000	8,330.53	$28,330.53	$20,000.00
		$20,100	$59,900	$49,900.00	$70,000.00	$20,100.00

Resulting in a reduction of loss to Company A of $63.78, Company B $76.28, and Company C $64.05. Examples might be multiplied indefinitely, but I am conscious of having infringed upon your space already, and I will trespass upon your indulgence no further than to give an example of the application of Mr. Rice's rule to Griswold's Statement No. 19, which appears to have given that indefatigable writer no little difficulty:

Co. A insures	$5,000 on Pork	Loss on Pork,	$10,000
Co. B insures	5,000 on Pork anad Flour	Loss on Flour,	3,000
Co. C insures	5,000 on Pork and Grain	Loss on Grain,	5,000
Co. D insures	5,000 on Pork, Flour and Grain		$18,000
	$20,000		

This being a case of double non-concurrency and Companies B, C and D covering on items not covered by Company A, the loss on flour and grain is first apportioned upon the three former companies and then they go back with their unexhausted amounts and contribute with Company A to make good the loss on pork.

	Loss on Flour.	Max. Over-Ins.	Over-Ins.	Ins.	Pays.
Co. D	$5,000			$2,083.33	$ 882.36
Co. B	5,000			5,000.00	2,117.64
	$10,000	$ 7,000	$4,083.33	$7,083.33	$3,000.00
	Loss on Grain.				
Co. D	$5,000			$2,916.67	$1,842.11
Co. C	5,000			5,000.00	3,157.89
	$10,000	5,000	2,916.67	$7,916.67	$5,000.00
		$12,000	$7,000.00		

Loss on Pork.	Ins.	Pays.
Co. A	$ 5,000.00	$ 4,166.67
Co. B	2,882.36	2,401.97
Co. C	1,842.11	1,535.09
Co. D	2,275.53	1,896.27
	$12,000.00	$10,000.00

Summary.	Ins.	Pays.
Co. A	$ 5,000	$ 4,166.67
Co. B	5,000	4,519.61
Co. C	5,000	4,692.98
Co. D	5,000	4,620.74
	$20,000	$18,000.00

Thus giving each an equitable share of the salvage and neither paying more than the proportion which the sum insured by it bears to the aggregate insurance.

I trust that my mite may tend to shed a ray of light upon a question of interest to the fraternity.

A. R. Manning.

APPORTIONMENT OF LOSS BY RICE'S RULE.

Reply by W. H. Daniels to A. R. Manning's Discussion of Apportionment of Loss by Rice's Rule.

Editor "Rough Notes": September 7, 1905.

The communication of A. R. Manning, of Cleveland, Ohio, which was published in the "Rough Notes" of July 6, 1905, in which he discusses and applies different rules for the apportionment of non-concurrent insurance, has been very thoroughly considered by me, because I was at that time investigating and experimenting with the rule advocated by E. F. Rice, of Cincinnati, Ohio, in a paper read by him in 1880 before the members of the Fire Underwriters' Association of the Northwest.

I contend now, as I have urged on several occasions in the past, that the apportionment of non-concurrent insurance is an important question, and the insurance companies for several good and practical reasons, should co-operate and adopt some rule for general use.

I have read, with considerable interest, what Mr. Manning says in the first stanza of his communication regarding the practice of some adjusters in selecting a rule and applying the same for the apportionment of non-concurrent insurance. He says, after referring to my communication of April 20th last, "I heartily concur in his hope that the discussion of this vexed question may lead to the adoption by most of the fire insurance companies doing business in the United States of a rule for the apportionment of losses under non-concurrent policies, instead of leaving the question to be wrangled over by the adjusters, each contending for the method that will best subserve the interests of the company represented by him, for the occasion, and finally compromised or settled by a majority vote, contrary to the convictions of those who may have advocated a more logical rule to govern the case in question." I regret that my experience compels me to admit that what Mr. Manning says in his communication about the methods adopted by some ad-

justers, in applying a rule for the apportionment of non-concurrent insurance, is true. An adjuster who is governed in selecting the rule to apply in these cases, by the way its application will effect the interest of the company or companies he represents, and applies the rule which is the most beneficial to his companies, because it reduces the amount of loss to be paid by them, is not honest. For this class of adjusters, what is needed is not so much the adoption of a rule for general use in the apportionment of non-concurrent insurance as actual practice in doing business honestly. They should learn to do business with due respect for and appreciation of, the rights of others—be governed by integrity and principle and not by greed for money, and be consistent. The adjuster who insists on applying in a particular case the rule which benefits most the company or companies he represents, and in some other case would apply another rule because it was to the advantage financially of his company or companies, is not properly qualified to act as an adjuster, and his case is one which needs heroic treatment by his employer.

In 1880 E. F. Rice, then an adjuster for the Ætna Insurance Company, and residing in Cincinnati, Ohio, read a paper at the meeting of the Fire Underwriters' Association of the Northwest, on the subject of apportionment of non-concurrent insurance. In his paper, after criticising several other rules, he advocated the use of a rule which has been named "Rice's Rule." He applies his rule to a complicated adjustment problem, and to understand the rule, it is necessary to thoroughly study the application of it as made by Mr. Rice.

The explanation of the rule as made by Mr. Rice, with the statement of loss and insurance, and the application of the rule as shown in detail in the paper read by Mr. Rice, as stated herein, is as follows:

"The loss, if any, for which the general policy alone is held, having been satisfied, the apportionment of the insurance remaining under that policy should be made to the several subjects insured in the proportion which the maximum over-insurance upon each item bears to the aggregate over-insurance on all collectively. Under such an apportionment an increase of loss, though disproportionately made, will increase the share of each company, and a decrease of loss will decrease the share of each com-

pany. The apportionment is made with reference to the existence of other insurance applicable to the payment of those losses.

"To illustrate what seems to me the only correct, legal and equitable method of apportioning this class of cases, I borrow the following examples from the "Insurance Times," of September, 1879, pages 595 and 605, only substituting letters for Roman numerals in indicating the subjects insured:

The Losses are:

On M	$500
On N	375
On O	250
On P	125
Losses	$1,250

The Insurances are:

Company A insures	$750 on M, N, O and P.
Company B insures	225 on M, N and O.
Company C insures	50 on M.
Company C insures	200 on N.
Company C insures	200 on O.
	$1,425 Insurance to pay.

"It is evident that the aggregate loss is $175 less than the aggregate insurance, and that Co. A alone covers the loss on P, $125, which loss is satisfied by that company before proceeding to an apportionment of the other losses. If the policies of A and B, which are now concurrent, were added to the insurance under policy C (of $50) upon M, we should have a maximum insurance of $900 to pay the M loss of $500, or an over-insurance of $400. If, however, these policies were applied with C's $200 to the payment of the N loss of $375, the over-insurance would be $675; or, similarly applied with the $200 specification of C's policy to the payment of the O loss of $250, the over-insurance upon this item would be $800. But the actual aggregate over-insurance is only $175; therefore an apportionment of the over-insurance would give $37.33 to the M loss, $63 to the N loss, and $74.67 to the O loss, or the whole amount of insurance applicable to the payment of the several losses would be:

$537.33 insurance to pay a loss of.....	$500
438.00 insurance to pay a loss of.....	375
324.67 insurance to pay a loss of.....	250
$1,300.00	$1,125

The apportionments of losses to insurance would be:

Loss on M, $500—		
Company A insures.....	$358.33 and pays	$333.43
Company B insures.....	129.00 and pays	120.04
Company C insures.....	50.00 and pays	46.53
	$537.33	$500.00
Loss on N, $375—		
Company A insures.....	$175.00 and pays	$149.88
Company B insures.....	63.00 and pays	53.94
Company C insures.....	200.00 and pays	171.23
	$438.00	$375.00
Loss on O, $250—		
Company A insures.....	$91.67 and pays	$70.59
Company B insures.....	33.00 and pays	25.41
Company C insures.....	200.00 and pays	154.00
	$324.67	$250.00
Loss on P, $125—		
Company A insures.....	$125.00 and pays	$125.00

You will notice when you begin to study the solution of this adjustment problem made by Mr. Rice, that he sets aside $125 of policy A, which is a compound policy covering on M, N, O and P, and the only one covering on P, to pay the loss of $125 on P. The rule he has applied is the "Cromie Rule."

This rule was made by Chief Justice Marshall of the Kentucky Supreme Court, in the case of Cromie vs. The Kentucky and Louisville Mutual Insurance Company, decided about fifty years ago. This decision is in 15 B. Monroe (Ky.) 432.

The Cromie Rule.

"When the compound insurance covers property which is not covered by the specific insurance, a portion of the compound insurance equal to the amount of loss on this property must be set aside to pay this loss. The remainder of the compound insurance contributes with the specific to pay the loss on the property, covered by the specific insurance. If the loss on the property covered only by the compound insurance is equal to or greater than the compound insurance, this insurance will be exhausted and there will be nothing to contribute from to help out the specific insurance."

Mr. Rice has explained fully how he obtains what he calls the maximum over-insurance, and it is on M, $400, on N, $675 and on O, $800, making a total maximum over-insurance on M, N and O of $1,875. The actual insurance in excess of the actual loss is $175. This actual over-insurance of $175 is apportioned to items M, N and O in the ratio that the maximum over-insurance on each of the three items bears to the total maximum over-insurance on all three items. This gives item M 400/1,875 of $175, which is $37.33—this amount added to $500, the amount of loss on M, makes the total insurance covering on M $537.33. Item N would have 675/1,875 of $175, which is $63.00—add to this amount the loss on N of $375, makes the total insurance covering on N $438. Item O would be entitled to 800/1,875 of $175, which is $74.67—this amount plus the loss on O of $250, makes the total insurance covering on O $324.67.

Policy A covers $750 on M, N, O and P. The loss on P is $125 and $125 of policy A has been set aside to pay the loss on P. This leaves $625 of policy A covering on M, N and O—policy B has $225 on M, N and O, which makes a total insurance of $850 on M, N and O.

We have shown that the total insurance on M is $537.33. Policy C has $50 specific insurance on M, and this deducted from $537.33 leaves $487.33 insurance on M in policies A and B. Mr. Rice makes 625/850 of $487.33 the insurance in policies A and

B on M, or $358.33 as the insurance in policy A covering on M. He also makes 225/850 of $487.33 the insurance in policies A and B on M, or $129 as the insurance on policy B covering on M. The insurance on M, on N and on O in companies A and B is made specific in the ratio that the insurance in each company covering on M, N and O bears to the total insurance in companies A and B covering on M, N and O. I ask you to carefully investigate the method adopted by Mr. Rice in apportioning the compound insurance between the companies on each item of property covered. I have explained it in detail. When I call your attention to the application of "Rice's Rule," to Mr. Griswold's statement No. 19 as made by Mr. Manning in his communication, I will recall how the compound insurance was apportioned by Mr. Rice.

It does not seem to me as if it were necessary for Mr. Rice to use the "Cromie Rule" in the solution of this adjustment problem. I believe the principle of the rule he used is broad enough to take care of an item which is covered only by one of the compound policies.

The maximum insurance in companies A, B and C, covering on M, is $1,025. The loss on M is $500, which deducted from $1,025, leaves a maximum over-insurance of $525. The maximum insurance in companies A, B and C, covering on N, is $1,175. Deduct from $1,175 the maximum insurance on N, $375 the loss on N, gives a maximum over-insurance on N of $800. The maximum insurance in companies A, B and C covering on O, is $1,175. The loss on O is $250, which deducted from $1,175, leaves a maximum over-insurance of $825. The maximum insurance on P is $750 and the loss is $125, leaving a maximum over-insurance of $625. The actual over-insurance is $175, which distributed to the four items of property in the ratio that the maximum over-insurance on each item bears to $2,775, the maximum over-insurance on all items, gives M $33.11, N $50.45, O $52.03 and P $39.41. These several items, added to the loss on each item gives us a total insurance on each item as follows

Insurance on item M,	$533.11, to pay a loss of.....	$500
Insurance on item N,	425.45, to pay a loss of.....	375
Insurance on item O,	302.03, to pay a loss of.....	250
Insurance on item P,	164.41, to pay a loss of.....	125
Total insuranace of $1,425.00, to pay a loss of.		$1,250

The insurance on P is shown to be $164.41, which deducted from $750, the amount of policy A, leaves $589.59 covering on M, N and O. Policy B covers $225 on M, N and O. It is necessary to deduct $164.41, the amount of insurance company A has on item P, from $750, the amount of the policy, before apportioning the compound insurance on items M, N and O to the two companies, A and B. If we did not do it, the insurance apportioned to company A might be more than $585.59. Company A would carry 58,559/81,059 of the compound insurance on each item and company B would carry 22,500/81,059 of the compound insurance on each item.

The apportionment of the compound insurance to items and the apportionment of the loss on each item would be:

Loss on M, $500—			
Company A insures.....	$349.01	and pays	$327.33
Company B insures.....	134.10	and pays	125.77
Company C insures.....	50.00	and pays	46.90
Total insuranace of.....	$533.11	pays	$500.00
Loss on N, $375—			
Company A insures.....	$162.87	and pays	$143.56
Company B insures.....	62.58	and pays	55.16
Company C insures.....	200.00	and pays	176.28
Total insurance of.....	$425.45	pays	$375.00
Loss on O, $250—			
Company A insures.....	$73.71	and pays	$61.01
Company B insures.....	28.32	and pays	23.44
Company C insures.....	200.00	and pays	165.55
Total insurance of.....	$302.03	pays	$250.00
Loss on P, $125—			
Company A insures.....	$164.41	and pays	$125.00
Total insurance of.....	$164.41	pays	$125.00
Company A insures on M.....	$349.01	and pays	$327.33
Company A insures on N.....	162.87	and pays	143.56
Company A insures on O.....	73.71	and pays	61.01
Company A insures on P.....	164.41	and pays	125.00
Total insurance of.....	$750.00	pays	$656.90
Company B insures on M.....	$134.10	and pays	$125.77
Company B insures on N.....	62.58	and pays	55.16
Company B insures on O.....	28.32	and pays	23.44
Total insurance of.....	$225.00	pays	$204.37
Company C insures on M.....	$50.00	and pays	$46.90
Company C insures on N.....	200.00	and pays	176.28
Company C insures on O.....	200.00	and pays	165.55
Total insurance of.....	$450.00	pays	$388.73
Company A insures.....	$750.00	and pays	$656.90
Company B insures.....	225.00	and pays	204.37
Company C insures.....	450.00	and pays	388.73
Total insurance of.....	$1,425.00	pays	$1,250.00

I think it advisable to treat this adjustment problem as I have, and distribute the actual over-insurance to all items covered by the insurance. In other words, it appears to me to be entirely unnecessary to use the "Cromie Rule" in this case, as Mr. Rice has done, for his rule, as I have shown, takes care of every item. The application of "Rice's Rule" to this problem would indicate that it is a good rule.

Mr. Rice did not give in the paper he read before the members of the Fire Underwriters' Association of the Northwest, his rule for apportionment of non-concurrent insurance. We are therefore compelled to develop his rule from the application of it, made by him to an adjustment problem, and this I have attempted to do.

Mr. Manning, in his communication, gives, as he says, "an example of the application of Mr. Rice's rule to Griswold's statement No. 19, which appears to have given that indefatigable writer no little difficulty.

Co. A insures	$5,000 on Pork.	Loss on Pork	$10,000
Co. B insures	5,000 on Pork and Flour.	Loss on Flour	3,000
Co. C insures	5,000 on Pork and Grain.	Loss on Grain	5,000
Co. D insures	5,000 on Pork, Flour and Grain.		$18,000
	$20,000		

"This being a case of double non-concurrency and companies B, C and D covering on items not covered by company A, the loss on flour and grain is first apportioned upon the three former companies and

then they go back with their unexhausted amounts and contribute with company A to make good the loss on pork.

	Loss on Flour.	Max. Over-Ins.	Over-Ins.	Ins.	Pays.
Co. D	$5,000			$2,083.33	$882.36
Co. B	5,000			5,000.00	2,117.64
	$10,000	$7,000	$4,083.33	$7,083.33	$3,000.00
	Loss on Grain.				
Co. D	$5,000			$2,916.67	$1,842.11
Co. C	5,000			5,000.00	3,157.89
	$10,000	5,000	2,916.67	$7,916.67	$5,000.00
	$8,000	$12,000	$7,000.00		

Loss on Pork.			Summary.	
	Ins.	Pays.	Ins.	Pays.
Co. A	$5,000.00	$4,166.67	$5,000.00	$4,166.67
Co. B	2,882.36	2,401.97	5,000.00	4,519.61
Co. C	1,842.11	1,535.09	5,000.00	4,519.61
Co. D	2,276.53	1,896.27	5,000.00	4,620.74
	$12,000.00	$10,000.00	$20,000.00	$18,000.00

"Thus giving each an equitable share of the salvage and neither paying more than the proportion which

the sum insured by it bears to the aggregate insurance."

If you will carefully examine the application of "Rice's Rule," as made by Mr. Manning to Griswold's statement No. 19, you will see that before he takes up the apportionment of the loss on pork, he succeeds in applying the rule correctly to a proposition like this:

Company B insures $5,000 on Flour. Loss on Flour.....$3,000
Company C insures 5,000 on Grain. Loss on Grain..... 5,000
Company D insures 5,000 on Flour and Grain.

If Mr. Griswold's statement No. 19, so far as insurance and loss are concerned, had involved only flour and grain, then the way Mr. Manning has handled it, as to loss on flour and grain, would be correct.

Company A covered only on pork, consequently it did not contribute from more than its face—that it, $5,000. Company B is made to contribute from $5,000 on flour and from $2,882.36 on pork, or from $7,882.36, when its policy was issued for $5,000. Company C issued a policy for $5,000, but it is made to contribute from $6,842.11. Company D, with a $5,000 policy, is made to contribute from $2,083.33 on flour, $2,916.67 on grain and $2,275.53 on pork, making a total of $7,275.53. In making each of these three $5,000 policies contribute from considerably more than their face, Mr. Manning has applied the principle advocated by the Supreme Court of Errors of Connecticut, in the case of Schmaelzle v. London and Lancashire Fire Ins. Co., where $55,000 insurance was made to contribute from $117,880.55. Mr. Manning refers in his communication to this case and does not speak as if he approved of the rule applied by the court. In fact, Mr. Manning criticises the decision made by the Connecticut court. If Mr. Manning has applied "Rice's Rule" to Mr. Griswold's statement No. 19, he has, in my opinion, demonstrated that it is not a good rule.

There are in this problem three items covered by the insurance—pork, flour and grain. The maximum insurance on pork is $20,000, because four $5,000 policies cover on pork. Deduct from this $20,000 the maximum insurance on pork, the loss on pork of $10,000 gives a maximum over-insurance of $10,000. The maximum insurance on flour is $10,000 in companies B and D—each covers for $5,000 on flour and other items. Take $3,000, the loss on flour from $10,000, the maximum insurance on flour, leaves $8,000 as the maximum over-insurance on flour. The maximum insurance on grain is $10,000, being a $5,000 policy in each company, C and D. This $10,000, the maximum insurance on grain, reduced $5,000, the loss on grain, leaves $5,000 as the maximum over-insurance on grain.

The maximum insurance on any item, it seems to me is the full amount that could be made to contribute to pay a loss on the item. In this case if the loss was all on pork and was $20,000 or more, the four companies would pay a total loss. In other words, there is $20,000 of insurance that could be called on to pay a loss on pork. There is $10,000 of insurance that could be made to pay a loss on flour

and also $10,000 that could be made to pay a loss on grain. If I am correct as to what maximum insurance means, we would get the following results:

		Loss on Pork.	Max. Over-Ins.	Over-Ins.	Ins.	Pays.
Company A	$5,000					
Company B	5,000					
Company C	5,000					
Company D	5,000					
	$20,000	$10,000	$10,000	$909.09	$10,909.09	$10,000
		Loss on Flour.				
Company B	$5,000					
Company D	5,000					
	$10,000	3,000	7,000	636.36	3,636.36	3,000
		Loss on Grain.				
Company C	$5,000					
Company D	5,000					
	$10,000	5,000	5,000	454.55	5,454.55	5,000
		$18,000	$22,000	$2,000.00	$20,000.00	$18,000

The total maximum over-insurance is shown to be $22,000. In making the distribution of the actual

over-insurance, we get 10,000/22,000 of $2,000 or $909.09 as covering on pork. Add to $909.09, the loss on pork of $10,000, gives us a total insurance on pork of $10,909.09. We have 7,000/22,000 of $2,000, the actual over-insurance, or $636.36 covering on flour. Add $3,000, the loss on flour, to $636.36, gives $3,636.36 as the total insurance on flour. The loss on grain is $5,000, which added to 5,000/22,000 of $2,000, the actual over-insurance, or $454.55, gives us $5,454.55 as the total insurance on grain.

We now have the total insurance covering on each of the three items of property described in the policies. Mr. Rice made the compound insurance specific in the ratio that the amount of each compound policy bore to the amount of all the compound insurance covering the property. The distribution can not be made on this basis if there is any specific insurance. For instance, there are four $5,000 policies covering pork. One-fourth of $10,909.09, the insurance on pork, is $2,727.27. As company A has $5,000 specific insurance on pork, we must get the amounts companies B, C and D cover on pork in some other way. There are two $5,000 compound policies covering on flour. There is $3,636.36 insurance on flour, which divided on the basis, the amount of each of the two policies bears to the amount of the two policies, gives $1,818.18 as the amount each company—B and D—insure on flour. Company B covers $5,000 only on pork and flour, consequently that part of it which does not cover on flour must cover on pork. By deducting $1,818.18, the insurance on flour, from $5,000, the amount of the policy issued by company B, leaves $3,181.82 as the amount this company covers on pork. We have two $5,000 compound policies covering on grain. The total insurance on grain is $5,454.55, which, divided on the basis, the amount of each policy bears to the amount of both policies, gives $2,727.28 of one policy and $2,727.27 of the other, covering on grain. Company C covers $5,000 only on pork and grain, consequently that part of it not covering on grain must cover on pork. If we deduct $2,727.28, the amount of policy issued by company C covering on grain, we get $2,272.72 as the amount company C covers on pork. Company D covers on pork, flour and grain. We have ascertained that this company covers $1,818.18 on flour and $2,727.27 on grain, consequently the difference between $4,545.45, the amount this company covers on flour and grain and $5,000, the amount of

the policy, which is $454.55, is the insurance company D covers on pork.

The schedule of insurance and apportionment of claim is as follows:

	Amt. of Policy	Total Claim	Pork		Flour		Grain	
			Insures	Claim	Insures	Claim	Insures	Claim
Co. A.....	$5,000	$4,583.34	$5,000.00	$4,583.34				
Co. B.....	5,000	4,416.66	3,181.82	2,916.66	$1,818.18	$1,500.00		
Co. C.....	5,000	4,583.33	2,272.72	2,083.33			$2,727.28	$2,500.00
Co. D.....	5,000	4,416.67	454.55	416.67	1,818.18	1,500.00	2,727.27	2,500.00
	$20,000	$18,000.00	$10,909.09	$10,000.00	$3,636.36	$3,000.00	$5,454.55	$5,000.00

An examination of the results obtained by my application of "Rice's Rule" shows that the percentage of loss paid by each company is as follows:

Company A..... .90926 per cent.
Company B..... .88333 per cent.
Company C..... .90926 per cent.
Company D..... .88333 per cent.

The greatest difference between the percentages paid is .02593 per cent.

It must not be assumed that "Rice's Rule" always produces such results, that each policy pays about the same percentage of the loss.

In a communication published in "Rough Notes" of April 20, 1905, wherein I discussed a rule for the apportionment of compound insurance, used by Willis O. Robb, of New York, I said:

After this examination of the two rules, the question very naturally arises: How generally can they be used? In my attempt to determine the matter, I applied them to an assumed case, and I found that both rules were failures when applied to the following assumed adjustment problem. I give herein the assumed case and explain the results as obtained by me when applying the two rules as I understand them:

Statement.

	Sound Value.	Loss.	Specific Insurance
Stock	$59,000	$1,000	$40,000
Machinery	21,000	20,000	20,000
Totals	$80,000	$21,000	$60,000
Compound insurance on stock and machinery			$10,000
Total insurance			$70,000

If we apply Mr. Robb's rule for the apportionment on the basis of the losses, we would divide $70,000, the total insurance, by $21,000, the total loss, which would give us a percentage of insurance to loss of 3.333333 plus, which, multiplied by the loss on stock of $1,000, gives $3,333.33 as the total specific and compound insurance on stock. This rule applied to machinery gives us $66,666.67 as the total specific and compound insurance on machinery. The specific insurance on stock being $40,000, the application of this rule would transfer $36,666.67 of this specific insurance from stock to machinery. It would be

impossible to change the insurance after the fire and make any part of the $40,000 specific insurance on stock cover on machinery.

If we make the apportionment, according to Mr. Robb's rule, on the basis of the sound values, we would divide the total insurance of $70,000 by the total sound value of $80,000, and it gives us a percentage of insurance to sound value .875, which, multiplied by $21,000, the sound value of machinery, gives, as the total specific and compound insurance on machinery, $18,275. This rule applied to stock gives $51,625 as the total specific and compound insurance on stock. The specific insurance on machinery being $20,000, the effect of applying this rule would be to transfer $1,725 of the specific insurance from machinery to stock. It would be impossible to do this after the fire.

Mr. Robb says, when speaking of the application of the rules: "* * * So that, whenever possible, and as nearly as possible, the ratio of insurance to loss (or value) shall be the same on all items."

The rules used by Mr. Robb were intended to make each policy pay the same or about the same percentage of the loss. I applied his rules to this assumed case to show their defects. If we apply "Rice's Rule" to this adjustment problem, we will get a total of $41,694.91 insurance, covering on stock, to pay a $1,000 loss. The percentage of loss paid on stock would be .023983 plus. This rule gives us $28,305.09 as the total insurance on machinery to pay a loss of $20,000. The percentage of loss paid on machinery is .706586 plus.

The percentage of loss paid by each company is as follows:

Specific insurance on stock..... .023983 per cent.

Specific insurance on machinery.... .706586 per cent.
Compound insurance on stock and

machinery . ..... .590892 per cent.

In this case the greatest difference between the percentages of loss paid is .682603 per cent.

I have applied "Rice's Rule" to several adjustment problems for the purpose of testing it, and so far it has proved much more satisfactory than I anticipated. If I understand the rule and apply it correctly, then so far as my experience goes, the rule produces satisfactory results. W. H. Daniels.

"Rice-Daniels' Rule."

I have taken Rice's Rule and made changes in it which in my judgment greatly improves it. I have applied this new version of Rice's Rule to several adjustment problems to illustrate its work and explain its application.

A. R. Manning, adjuster of Cleveland, Ohio, gave the above name to this rule, and, speaking of the rule, he says:

"Mr. Daniels, however, has elaborated a most ingenious method of apportioning the liability upon the several policies, in cases of non-concurrent blankets, after the insurance applicable to the payment of the losses upon the several items of the policies shall have been determined by 'Rice's Rule,' and it appears to clothe 'Rice's Rule' with universal and unvarying application to a problem which has taxed the best faculties of the votaries of fire insurance to their utmost in the attempt to formulate a satisfactory solution of an important question. It is at least deserving of study on the part of the fire insurance adjusters, and the earnest consideration of the managers of the fire insurance companies. I trust that it will receive the attention it merits, and that it will result in the adoption of a rule that will in future avoid the inconsistencies to which we have been subjected."

The above statement having been made by a man of unquestionable ability and who has had many years' experience in adjusting fire losses, leads me to think that in the changes which I have made in "Rice's Rule," in my application of the same, I may have "Builded better than I thought."

In this rule I use a part of a letter published in "Rough Notes" on September 7, 1905, for the reason that the letter shows the difference between the working of "Rice's Rule" and the one I give here.

In 1880, E. F. Rice, then an adjuster for the Aetna Insurance Company, and residing in Cincinnati, Ohio, read a paper at the meeting of the Fire Underwriters' Association of the Northwest, on the subject of apportionment of non-concurrent insurance. In his paper, after criticising several other rules, he advocated the use of a rule which has been named "Rice's Rule." He applies his rule to a complicated adjustment problem, and to understand the rule, it is necessary to thoroughly study the application of it as made by Mr. Rice.

The explanation of the rule as made by Mr. Rice, with the statement of loss and insurance, and the application of the rule as shown in detail in the paper read by Mr. Rice, is as follows:

"The loss, if any, for which the general policy alone is held, having been satisfied, the apportionment of the insurance remaining under that policy should be made to the several subjects insured in the proportion which the maximum over-insurance upon each item bears to the aggregate over-insurance upon all collectively. Under such an apportionment an increase of loss, though disproportionately made, will increase the share of each company, and a decrease of loss will decrease the share of each company. The apportionment is made with reference to the existence of other insurance applicable to the payment of those losses.

Problem No. 1.

"To illustrate what seems to me the only correct, legal and equitable method of apportioning this class of cases, I borrow the following examples from the "Insurance Times," of September, 1879, pages 595 and 605, only substituting letters for Roman numerals in indicating the subjects insured:

The Insurances are:	The Losses are:
Company A insures $750 on M, N, O and P.	On M....$500
Company B insures 225 on M, N and O.	On N.... 375
Company C insures 50 on M.	On O.... 250
Company C insures 200 on N.	On P.... 125
Company C insures 200 on O.	
$1,425 Insurance to pay.	Losses..$1,250

"It is evident that the aggregate loss is $175 less than the aggregate insurance, and that Company A alone covers the loss on P, $125, which loss is satisfied by that company before proceeding to an apportionment of the other losses. If the policies of A and B, which are now concurrent, were added to the insurance under policy C (of $50) upon M, we should have a maximum insurance of $900 to pay the M loss of $500, or an over-insurance of $400. If, however, these policies were applied with C's $200 to the payment of the N loss of $375, the over-insurance would be $675; or, similarly applied with the $200 specification of C's policy to the payment of the O loss of $250, the over-insurance upon this item would be $800. But the actual aggregate over-insurance is only $175; therefore an apportionment of the over-insurance would give $37.33 to the M loss, $63

to the N loss, and $74.67 to the O loss, or the whole amount of insurance applicable to the payment of the several losses would be:

$537.33 insurance to pay a loss of	$500
438.00 insurance to pay a loss of	375
324.67 insurance to pay a loss of	250
$1,300.00	$1,125

The apportionments of losses to insurance would be:

Loss on M, $500—			
Company A insures	$358.33	and pays	$333.43
Company B insures	129.00	and pays	120.04
Company C insures	50.00	and pays	46.53
	$537.33		$500.00
Loss on N, $375—			
Company A insures	$175.00	and pays	$149.83
Company B insures	63.00	and pays	53.94
Company C insures	200.00	and pays	171.23
	$438.00		$375.00
Loss on O, $250—			
Company A insures	$ 91.67	and pays	$ 70.59
Company B insures	33.00	and pays	25.41
Company C insures	200.00	and pays	154.00
	$324.67		$250.00
Loss on P, $125—			
Company A insures	$125.00	and pays	$125.00

You will notice when you begin to study the solution of this adjustment problem made by Mr. Rice, that he sets aside $125 of policy A, which is a compound policy covering on M, N, O and P, and the only one covering on P, to pay the loss of $125 on P. The rule he has applied is the "Cromie Rule." This rule was made by Chief Justice Marshall of the Kentucky Supreme Court, in the case of Cromie vs. The Kentucky and Louisville Mutual Insurance Company, decided about fifty years ago. This decision is in 15 B. Monroe (Ky.) 432.

The Cromie Rule.

"When the compound insurance covers property which is not covered by the specific insurance, a portion of the compound insurance equal to the amount of loss on this property must be set aside to pay this loss. The remainder of the compound insurance contributes with the specific to pay the loss on the property covered by the specific insurance. If the loss on the property covered only by the compound insurance is equal to or greater than the compound insurance, this insurance will be exhausted and there will be nothing to contribute from to help out the specific insurance."

Mr. Rice has explained fully how he obtains what he calls the maximum over-insurance, and it is on M, $400, on N, $675, and on O, $800, making a total maximum over-insurance on M, N and O of $1,875. The actual insurance in excess of the actual loss is $175. This actual over-insurance of $175 is apportioned to items M, N and O in the ratio that the maximum over-insurance on each of the three items bears to the total maximum over-insurance on all of the three items. This gives item M 400/1,875 of $175, which is $37.33; this amount added to $500, the amount of loss on M, makes the total insurance covering on M $537.33. Item N would have 675/1,875 of $175, which is $63; add to this amount the loss on N of $375, makes the total insurance covering on N $438. Item O would be entitled to 800/1,875 of $175, which is $74.67; this amount plus the loss on O of $250, makes the total insurance covering on O $324.67.

Policy A covers $750 on M, N, O and P. The loss on P is $125, and $125 of policy A has been set aside to pay the loss on P. This leaves $625 of policy A covering on M, N and O. Policy B has $225 on M, N and O, which makes a total insurance of $850 on M, N and O.

We have shown that the total insurance on M is $537.33. Policy C has $50 specific insurance on M, and this deducted from $537.33 leaves $487.33 insurance on M in policies A and B. Mr. Rice makes 625/850 of $487.33 the insurance in policies A and B on M, or $358.33 as the insurance in policy A covering on M. He also makes 225/850 of $487.33 the insurance in policies A and B on M, or $129 as the insurance in policy B covering on M. The insurance on M, on N and on O in companies A and B is made specific in the ratio that the insurance in each company covering on M, N and O bears to the total insurance in companies A and B covering on M, N and O. I ask you to carefully investigate the method adopted by Mr. Rice in apportioning the compound insurance between the companies on each item of property covered. I have explained it in detail.

Problem No. 2.

Mr. Manning, in his communication, gives an example of the application of Mr. Rice's rule to Griswold's statement No. 19, which is as follows:

Co. A insures	$5,000	on Pork	Loss on Pork	$10,000
Co. B insures	5,000	on Pork and Flour.	Loss on Flour	3,000
Co. C insures	5,000	on Pork and Grain.	Loss on Grain	5,000
Co. D insures	5,000	on Pork, Flour and Grain.		
	$20,000			$18,000

Mr. Manning says: "This being a case of double non-concurrency and companies B, C and D covering on items not covered by company A, the loss on flour and grain is first apportioned upon the three former companies and then they go back with their unexhausted amounts and contribute with company A to make good the loss on pork."

			Loss on Flour.	Max. Over-Ins.	Over Ins.	Ins.	Pays.
Co.	D	$ 5,000				$2,083.33	$ 882.36
Co.	B	5,000				5,000.00	2,117.64
		$10,000	$ 3,000	$ 7,000	$4,083.33	$7,083.33	$3,000.00
			Loss on Grain.				
Co.	D	$ 5,000				$2,916.67	$1,842.11
Co.	C	5,000				5,000.00	3,157.89
		$10,000	5,000	5,000	2,916.67	$7,916.67	$5,000.00
			$ 8,000	$12,000	$7,000.00		

Losses on Pork.		Ins.	Pays.
Co.	A	$ 5,000.00	$ 4,166.67
Co.	B	2,882.36	2,401.97
Co.	C	1,842.11	1,535.09
Co.	D	2,275.53	1,896.27
		$12,000.00	$10,000.00

Summary.

		Ins.	Pays
Co.	A	$ 5,000.00	$ 4,166.67
Co.	B	5,000.00	4,519.61
Co.	C	5,000.00	4,519.61
Co.	D	5,000.00	4,620.74
		$20,000.00	$18,000.00

Company covered only on pork, consequently it did not contribute from more than its face—that is, $5,000. Company B is made to contribute from $5,000 on flour and from $2,882.36 on pork, or from $7,882.36, when its policy was issued for $5,000. Company C issued a policy for $5,000, but it is made to contribute from $6,842.11. Company D, with a $5,000 policy, is made to contribute from $2,083.33 on flour, $2,916.67 on grain, and $2,275.53 on pork, making a total of $7,275.53. In making each of these three $5,000 policies contribute from considerably more than their face, Mr. Manning has applied the principle advocated by the Supreme Court of Errors of Connecticut, in the case of Schmaelzle vs. London and Lancashire Fire Ins. Co.

In the case of Schmaelzle vs. London & Lancashire Fire Ins. Co., decided January 7, 1903, by the Supreme Court of Errors of Connecticut, 53 Atlantic Reporter, 841, the court made $55,000 compound insurance contribute from $117,880.55. It is assumed by the court in this case that a policy can legally be made to contribute for loss or damage caused at one time for an amount largely in excess of the insurance named in the policy. The principle which is the foundation of this decision is that the limitation of the amount a company may be compelled to contribute from in the payment of a loss is not the insurance named in the policy and for which the consideration only was given.

In this case the compound insurance was made to contribute with the specific from its full amount on the item which had the largest loss. The amount of the compound insurance remaining, after paying the loss on this item, contributes with the specific on the item of the policy which has the second largest loss. This plan of contribution is continued until the losses are paid or the compound insurance is exhausted. The principle which the decision in this case is based on, is not changed because of not using the English or Albany rules, which make the compound insurance contribute with the specific in its full amount on each item, or because of not making the compound insurance contribute first with the specific, to pay the loss on the item of the policy which is the least damaged, or because the compound insurance is not made to contribute with the specific and pay the loss on the items as they are set forth in the policy form. "Rice's Rule," as applied to Griswold's statement No. 19 by Mr. Manning, makes $15,000 compound insur-

ance contribute from $22,000, and for this reason I do not consider the rule a good one.

Rule.

First—Separate the damaged or destroyed property covered by all policies into as many items or divisions as is necessary, because of the non-concurrent insurance. Each item or division of property covered by specific and compound insurance and that is not covered by all the compound insurance, must be handled separately.

Second—Ascertain the maximum insurance on each item or division of property. Maximum insurance on any item or division of property, means the total insurance which could be made to contribute to pay a loss thereon.

Third—When the property is separated into items or divisions, ascertain the loss or damage on each.

Fourth—If the loss or damage is on only one of the items or divisions of property, all of the insurance—maximum insurance—covering it must contribute to pay the claim.

Fifth—Deduct the loss on each item or division of property from the maximum insurance thereon, and the remainder will be the maximum over-insurance.

Sixth—Deduct the total loss or damage on all items or divisions of property from the total insurance thereon, and the remainder will be the actual over-insurance. Apportion the actual over-insurance to each item or division of property on the following basis—that is, as the maximum over-insurance on each item or division of property bears to the maximum over-insurance on all of them.

Seventh—Add the loss or damage on each item, or division of property, to the actual over-insurance apportioned to each, and the amount obtained will be the total insurance—compound and specific—covering thereon which must contribute to pay the different claims.

Eighth—The specific insurance on any item, or division of property, must be deducted from the total insurance thereon to ascertain the amount of the compound insurance which must be apportioned to the companies.

Ninth—If two or more companies cover an item or division of property—one or more specific, and the other one compound—the remainder, after deducting

the specific from the total insurance thereon, would be the amount the compound policy covered on the item or division.

Tenth—Apportion the compound insurance in each company to the different items or divisions of property in the ratio that the compound insurance on each item or division bears to the total compound insurance on all items or divisions of property covered by the policy. If under the first apportionment of the compound insurance to companies the total insurance on some item or division is too large, it will be too small on some other item or division. The excess insurance may be on one item or division and the shortage on two or more of them; the conditions may be the reverse of this, and the excess and shortage of insurance may both be on more than one item or division of property.

Eleventh—If there is an excess and a shortage of insurance on different items or divisions of property after the first apportionment of the compound insurance to companies, a re-apportionment of the compound insurance on items or divisions where there is an over-insurance must be made. The over-insurance in companies carrying the compound insurance is apportioned from the items or divisions of property on which they cover where there is an excess of insurance, to the items or divisions on which they cover, where there is a shortage in the ratio that the insurance in each company, on each item or division, under the first apportionment of insurance to companies, bears to the total of said compound insurance thereon.

Twelfth—Apportion the loss and damage on each item and division of property to each company covering thereon in the ratio that the amount of insurance in each company on the item or division bears to the total insurance thereon.

Problem No. 3.

Company A covers on M, N, O and P		$ 750
Company B covers on M, N and O		225
Company C covers on M		50
Company C covers on N		200
Company C covers on O		200
Total Insurance		$1,425
Loss on M	$ 500	
Loss on N	375	
Loss on O	250	
Loss on P	125	
Total loss	$1,250	

This is my solution of Problem No. 1, by omitting the use of the "Cromie Rule," which was used by Mr. Rice. It is not necessary to use the "Cromie Rule" in the solution of the adjustment problem which I have called "Problem No. 1."

The maximum insurance in companies A, B and C, covering on M, is $1,025. The loss on M is $500, which, deducted from $1,025, leaves a maximum over-insurance of $525. The maximum insurance in companies A, B and C, covering on N, is $1,175. Deduct from $1,175, the maximum insurance on N, $375, the loss on N, gives a maximum over-insurance on N of $800. The maximum insurance in companies A, B and C, covering on O, is $1,175. The loss on O is $250, which, deducted from $175, leaves a maximum over-insurance of $825. The maximum insurance on P is $750 and the loss is $125, leaving a maximum over-insurance of $625. The actual over-insurance is $175, which distributed to the four items of property in the ratio that the maximum over-insurance on each item bears to $2,775, the maximum over-insurance on all items, gives M $33.11, N $50.45, O $52.03, and P $39.41. These several items, added to the loss on each item, gives us a total insurance on each item as follows:

Insurance on item M, $533.11, to pay a loss of.....	$ 500
Insurance on item N, $425.45, to pay a loss of.....	375
Insurance on item O, $302.03, to pay a loss of.....	250
Insurance on item P, $164.41, to pay a loss of.....	125
Total insurance of $1,425, to pay a loss of.....	$1,250

The insurance on P is shown to be $164.41, which deducted from $750, the amount of policy A, leaves $589.59 covering on M, N and O. Policy B covers $225 on M, N and O. It is necessary to deduct $164,-41, the amount of insurance company A has on item P, from $750, the amount of the policy, before apportioning the compound insurance on items M, N and O to the two companies, A and B. If we did not do it, the insurance apportioned to company A might be more than $585.59. Company A would carry 58,-559/81,059 of the compound insurance on each item, and company B would carry 22,500/81,059 of the compound insurance on each item.

The apportionment of the insurance to items and the apportionment of the loss on each item would be:

Maximum Insurance.		Loss	Max. over-Ins.	Actual over-Ins.	Ins.	Pays.
"M"—						
Co. A	$ 750.00				$ 348.41	$ 327.48
Co. B	225.00				133.55	125.53
Co. C	50.00				50.00	46.99
	$1,025.00	$ 500.00	$ 525.00	$ 31.96	$ 531.96	$ 500.00
"N"—						
Co. A	$ 750.00				$ 161.71	$ 143.12
Co. B	225.00				61.99	54.87
Co. C	200.00				200.00	177.01
	$1,175.00	375.00	800.00	48.70	$ 423.70	$ 375.00
"O"—						
Co. A	$ 750.00				$ 76.84	$ 62.72
Co. B	225.00				29.46	24.04
Co. C	200.00				200.00	163.24
	$1,175.00	250.00	925.00	56.30	$ 306.30	$ 250.00
"P"—						
Co. A	$ 750.00	125.00	625.00	38.04	$ 163.04	$ 125.00
Totals		$1,250.00	$2,875.00	$175.00	$1,425.00	$1,250.00

Company A insures on M....	$ 348.41	and pays	$ 327.48
Company A insures on N....	161.71	and pays	143.12
Company A insures on O....	76.84	and pays	62.72
Company A insures on P....	163.04	and pays	125.00
Total insurance of.....	$ 750.00	pays	$ 658.32
Company B insures on M....	$ 133.55	and pays	$ 125.53
Company B insures on N....	61.99	and pays	54.87
Company B insures on O....	29.46	and pays	24.04
Total insurance of.....	$ 225.00	pays	$ 204.44
Company C insures on M....	$ 50.00	and pays	$ 46.99
Company C insures on N....	200.00	and pays	177.01
Company C insures on O....	200.00	and pays	163.24
Total insurance of.....	$ 450.00	pays	$ 387.24
Company A insures.....	$ 750.00	and pays	$ 658.32
Company B insures.....	225.00	and pays	204.44
Company C insures.....	450.00	and pays	387.24
Total insurance of.....	$1,425.00	pays	$1,250.00

I think it advisable to treat this adjustment problem as I have, and distribute the actual over-insurance to all items covered by the insurance. In other words, it appears to me to be entirely unnecessary to use the "Cromie Rule" in this case.

Mr. Rice did not give, in the paper he read before the members of the Fire Underwriters' Association of the Northwest, his rule for appportionment of non-concurrent insurance. We are therefore compelled to develop his rule from the application of it made by himself and others to adjustment problems, and this I have attempted to do.

Problem No. 4.

I will now apply the rule which I am using to Griswold's Statement No. 20:

Company A covers flour and lard.....	$ 5,000
Company B covers flour and grain.....	5,000
Company C covers pork and grain.....	5,000
Total insurance	$15,000

Loss on flour.....	$ 3,500
Loss on pork.....	2,000
Loss on grain.....	5,000
Loss on lard.....	3,000
Total loss	$13,500

Maximum Insurance.		Loss.	Max. over-Ins.	Actual over-Ins.	Ins.	Pays.
Lard:—						
Co. A	$ 5,000	$ 3,000	$ 2,000	$ 181.82	$ 3,181.82	$ 3,000.00
Pork:—						
Co. C	5,000	2,000	3,000	272.73	2,272.73	2,000.00
Flour:—						
Co. A	5,000				1,818.18	1,555.55
Co. B	5,000				2,272.73	1,944.45
	$10,000	3,500	6,500	590.91	$ 4,090.91	$ 3,500.00
Grain:—						
Co. B	$ 5,000				$ 2,727.27	$ 2,500.00
Co. C	5,000				2,727.27	2,500.00
	$10,000	5,000	5,000	454.54	$ 5,454.54	$ 5,000.00
Totals		$13,500	$16,500	$1,500.00	$15,000.00	$13,500.00

Company A insures on lard.....	$3,181.82	pays	$3,000.00
Company A insures on flour.....	1,818.18	pays	1,555.55
Totals	$5,000.00		$4,555.55
Company B insures on flour.....	$2,272.73	pays	$1,944.45
Company B insures on grain....	2,727.27	pays	2,500.00
Totals	$5,000.00		$4,444.45
Company C insures on pork.....	$2,272.73	pays	2,000.00
Company C insures on grain....	2,727.27	pays	2,500.00
Totals	$5,000.00		$4,500.00

Company A covers $5,000 on flour and lard. I apply the rule for the apportionment of the compound insurance used in problems No. 1 and No. 3, and make it cover $3,181.82 on lard, consequently the remainder, or $1,818.18, covers on flour. A and B are made to cover $4,090.91 on flour, and as A covers $1,818.18 on flour, B must cover $2,272.73 to make $4,090.91, the full amount of insurance on flour. Company C covers $5,000 on pork and grain. It is made to cover $2,272.73 on pork; the remainder, or $2,727.27, must be what C covers on grain. B and C cover on grain for $5,454.54, and if C covers $2,727.27, B must cover $2,727.27 to make $5,454.54, the total insurance on grain. This as you will see is not a complicated adjustment problem, because the insurance carried by each company on each item of property is known when the total insurance on each item of property is ascertained.

Problem No. 5.

Company A covers on wheat.....	$ 2,500
Company A covers on corn.....	3,000
Company A covers on oats.....	2,000
Company B covers on grain.....	5,000
Company C covers on grain.....	6,000
Total insurance	$18,500

Loss on wheat.....	$ 3,000
Loss on corn.....	4,000
Loss on oats.....	8,000
Total loss	$15,000

Maximum Insurance.		Loss.	Max. over-Ins.	Actual over-Ins.	Ins.	Pays.
Wheat:—						
Co. A	$ 5,000				$ 2,500.00	$ 1,688.74
Co. B	2,500				882.35	596.02
Co. C	6,000				1,058.83	715.24
	$13,500	$ 3,000	$10,500	$1,441,18	$ 4,441.18	$ 3,000.00
Corn:—						
Co. A	$ 5,000				$ 3,000.00	$ 2,233.58
Co. B	3,000				1,078.43	802.92
Co. C	6,000				1,294.12	963.50
	$14,000	4,000	10,000	1,372.55	$ 5,372.55	$ 4,000.00
Oats:—						
Co. A	$ 2,000				$ 2,000.00	$ 1,841.99
Co. B	5,000				3,039.22	2,799.09
Co. C	6,000				3,647.05	3,358.92
	$13,000	8,000	5,000	686.27	$ 8,686.27	$ 8,000.00
Totals	$15,000		$25,000	$3,500.00	$18,500.00	$15,000.00

Company A insures on wheat....	$2,500.00	pays	$1,688.74
Company A insures on corn.....	3,000.00	pays	2,233.58
Company A insures on oats.....	2,000.00	pays	1,841.99
Totals	$7,500.00		$5,764.31
Company B insures on wheat....	$ 882.35	pays	$ 596.02
Company B insures on corn.....	1,078.43	pays	802.92
Company B insures on oats.....	3,039.22	pays	2,799.09
Totals	$5,000.00		$4,198.03
Company C insures on wheat....	$1,058.83	pays	$ 715.24
Company C insures on corn.....	1,294.12	pays	963.50
Company C insures on oats.....	3,647.05	pays	3,358.92
Totals	$6,000.00		$5,037.66

I have ascertained the insurance covering on each item of property—wheat, corn and oats—by using the same rule that has been used in Problems 1, 3 and 4. Companies B and C have $1,941.18 insurance on wheat; 5,000/11,000 of $1,941.18, or $882.35, is the amount company B covers on wheat, and 6,000/11,000, or $1,941.18, which is $1,058.83, is the amount Company C covers on wheat. The compound insurance on corn and oats in companies B and C is divided the same as I have apportioned the compound insurance in these companies on wheat.

Problem No. 6.

Company A covers pork.....	$ 5,000
Company B covers pork and flour.....	5,000
Company C covers pork and grain.....	5,000
Company D covers pork, flour and grain.....	5,000
Total insurance	$20,000

Loss on pork.....	$10,000
Loss on flour.....	3,000
Loss on grain.....	5,000
Total loss	$18,000

This is Griswold's Statement No. 19. Mr. Manning applied "Rice's Rule" to it in Problem No. 2, which please examine carefully and note the difference in the rule used by him and the one I have applied:

Maximum Insurance.		Loss.	Max. over-Ins.	Actual over-Ins.	Ins.	Pays.
Pork:—						
Co. A	$ 5,000				$ 5,000.00	$ 4,583.34
Co. B	5,000				2,777.78	2,546.30
Co. C	5,000				1,896.55	1,738.50
Co. D	5,000				1,234.76	1,131.86
	$20,000	$10,000	$10,000	$ 909.09	$10,909.09	$10,000.00
Flour:—						
Co. B	$ 5,000				$ 2,222.22	$ 1,833.33
Co. D	5,000				1,414.14	1,166.67
	$10,000	3,000	7,000	636.36	$ 3,636.36	$ 3,000.00
Grain:—						
Co. C	$ 5,000				$ 3,103.45	$ 2,844.83
Co. D	5,000				2,351.10	2,155.17
	$10,000	5,000	5,000	454.55	$ 5,454.55	$ 5,000.00
Totals	$18,000		$22,000	$2,000.00	$20,000.00	$18,000.00

SCHEDULE OF INSURANCE AND APPORTIONMENT OF CLAIM.

	Amt. of Policy.	Total Claim.	Pork. Ins.	Pork. Claim.	Flour. Ins.	Flour. Claim.	Grain. Ins.	Grain. Claim.
Co. A	$ 5,000	$ 4,583.34	$ 5,000.00	$ 4,583.34				
Co. B	5,000	4,379.63	2,777.78	2,546.30	$2,222.22	$1,833.33		
Co. C	5,000	4,583.33	1,896.55	1,738.50			$3,103.45	$2,844.83
Co. D	5,000	4,453.70	1,234.76	1,131.86	1,414.14	1,166.67	2,351.10	2,155.17
Totals	$20,000	$18,000.00	$10,909.09	$10,000.00	$3,636.36	$3,000.00	$5,454.55	$5,000.00

Schedule of Insurance and Apportionment of Claim.

There are in this problem three items covered by the insurance—pork, flour and grain. The maximum insurance on pork is $20,000, because four $5,000 policies cover on pork. Deduct from this $20,000 the maximum insurance on pork, the loss on pork of $10,000 gives a maximum over-insurance of $10,000. The maximum insurance on flour is $10,000 in companies B and D each covers for $5,000 on flour and other items. Take $3,000, the loss on flour, from $10,000, the maximum insurance on flour, leaves $8,000 as the maximum over-insurance on flour. The maximum insurance on grain is $10,000, being a $5,000 policy in each company, C and D. This $10,000, the maximum insurance on grain, reduced $5,000, the loss on grain, leaves $5,000 as the maximum over-insurance on grain.

The maximum insurance on any item is the full amount that could be made to contribute to pay a loss on the item. In this case, if the loss was all on pork and was $20,000 or more, the four companies would pay a total loss. In other words, there is $20,000 of insurance that could be called on to pay a loss on pork. There is $10,000 of insurance that could be made to pay a loss on flour, and also $10,000 that could be made to pay a loss on grain.

The total maximum over-insurance is shown to be $22,000. In making the distribution of the actual over-insurance, we get 10,000/22,000 of $2,000, or $909.09, as covering on pork. Add to $909.09 the loss on pork of $10,000, gives us a total insurance on pork of $10,909.09. We have 7,000/22,000 of $2,000, the actual over-insurance, or $636.36 covering on flour. Add $3,000, the loss on flour, to $636.36, gives $3,636.36 as the total insurance on flour. The loss on grain is $5,000, which added to 5,000/22,000 of $2,000, the actual over-insurance, or $454.55, gives us $5,454.55 as the total insurance on grain.

Apportionment of Insurance to Companies.

By the first apportionment of the compound insurance on each item of property to companies, I get the following:

	Pork.	Flour.	Grain.
Company A insures..	$ 5,000.00		
Company B insures..	3,095.24	$1,904.76	
Company C insures..	2,600.00		$2,400.00
Company D insures..	1,969.70	1,212.12	1,818.18
Totals	$12,664.94	$3,116.88	$4,218.18

The total insurance on pork is $10,909.09, and $5,000 of this is in company A and is specific. The compound insurance covers $5,909.09 on pork, $3,636.36 on flour, and $5,454.55 on grain. Company B covers on pork and flour for $5,000. I apportion the $5,000 insurance in company B to pork and flour, on the following basis—that is, as the compound insurance on each item bears to the compound insurance on both items, 590,909/954,545 of $5,000 is $3,095.24, which is the insurance on pork in company B; 363,636/954,545 of $5,000 is $1,904.76 and this is the insurance on flour in company B. Company C covers $5,000 on pork and grain. I make 590,909/1,136,364 of $5,000, that is, $2,600, to cover on pork, and 545,455/1,136,364 of $5,000, or $2,400, cover on grain. Company D have $5,000 covering on pork, flour and grain. 590,909/1,500,000 of $5,000 is $1,960.70, which is the amount company D covers on pork; 363,636/1,500,000 of $5,000 is $1,212.12 and this is the amount company D covers on flour, and 545,455/1,500,000 of $5,000 is $1,818.18, which is the amount company D covers on grain.

Re-Apportionment of Insurance to Companies.

The first apportionment of insurance to companies on pork gives us $12,664.94 when there is only $10,909.09 total insurance on the item in all companies. We get therefore $1,755.85 more insurance on pork than there actually is on it, and this amount must be transferred to some other item or items, where there is a shortage. The actual insurance on flour is $3,636.36 and the first apportionment of insurance to companies gives us $3,116.88. There is a shortage here of $519.48 which must be taken from the insurance on pork in companies B and D. There is $5,064.94 in companies B and D on pork. Company B has $3,095.24 of it and we take 309,524/506,494 of $519.48 or $317.46 from the $3,095.24 insurance in company B on pork, and add it to $1,904.76, the insurance in company B on flour. This gives us $2,777.78 insurance on pork and $2,222.22 insurance on flour in company B. We take from company D which has $1,969.70 on pork 196,970/506,494 of $519.48 or $202.02 and add it to $1,212.12, the amount company D covers on flour under the first apportionment, and it gives us $1,414.14 as the total insurance company D covers on flour. There is a shortage of insurance in companies C and D on grain under the first apportionment of insurance to com-

panies of $1,236.37. This amount must be taken from the insurance apportioned under the first apportionment on pork in these companies. Company C has $2,600 and company D $1,969.70, making a total of $4,569.70. 260,000/456,970 of $1,236.37 is $703.45, which deducted from the $2,600 insurance under the first apportionment in company C on pork leaves $1,896.55 actual insurance on pork in company C. This $703.45 taken from the insurance under the first apportionment in company C on pork and added to the $2,400 in this company under the first apportionment on grain, makes the actual insurance in company C on grain $3,103.45. 196,970/456,970 of $1,236.37 is $532.92, which is the amount of insurance in company D under the first apportionment of insurance to companies covering on pork, and transferred to the insurance on grain. This makes the actual insurance on grain $2,351.10 in company D. We have taken from the $1,969.70 insurance on pork, under the first apportionment $202.02 and added it to the insurance on flour, and $532.92 which has been added to the insurance on grain, making a total of $734.94 deducted, which leaves the actual insurance on pork in company D $1,234.76.

Problem No. 7.

Company A covers pork	$5,000
Company B covers pork and flour	5,000
Company C covers pork and grain	5,000
Company D covers pork, flour and grain	5,000
Total insurance	$20,000

Loss on pork	$5,000
Loss on flour	8,000
Loss on grain	5,000
Total loss	$18,000

This is Griswold's statement No. 19, with the loss on pork changed from $10,000 to $5,000 and the loss on flour changed from $3,000 to $8,000.

Maximum Insurance.		Loss.	Max. over-Ins.	Actual over-Ins.	Ins.	Pays.
Pork:—						
Co. A	$ 5,000				$ 5,000.00	$ 3,928.57
Co. B	5,000				222.22	174.60
Co. C	5,000				1,000.00	785.71
Co. D	5,000				141.42	111.12
	$20,000	$ 5,000	$15,000	$1,363.64	$ 6,363.64	$ 5,000.00
Flour:—						
Co. B	$ 5,000				$ 4,777.78	$ 4,671.60
Co. D	5,000				3,404.04	3,328.40
	$10,000	8,000	2,000	181.82	8,181.82	8,000.00
Grain:—						
Co. C	$ 5,000				$ 4,000.00	$ 3,666.67
Co. D	5,000				1,454.54	1,333.33
	$10,000	5,000	5,000	454.54	$ 5,454.54	$ 5,000.00
Totals	$18,000		$22,000	$2,000.00	$20,000.00	$18,000.00

SCHEDULE OF INSURANCE AND APPORTIONMENT OF CLAIM.

	Amt. of Policy.	Total Claim.	Pork. Ins.	Pork. Claim.	Flour. Ins.	Flour. Claim.	Grain. Ins.	Grain. Claim.
Co. A	$ 5,000	$ 3,928.57	$ 5,000.00	$ 3,928.57				
Co. B	5,000	4,846.20	222.22	174.60	$4,777.78	$4,671.60		
Co. C	5,000	4,552.38	1,000.00	785.71			$4,000.00	$3,666.67
Co. D	5,000	4.772.85	141.42	111.12	3,404.04	3,328.40	1,454.54	1,333.33
Totals	$20,000	$18,000.00	$ 6,363.64	$ 5,000.00	$8,181.82	$8,000.00	$5,454.54	$5,000.00

The total insurance on each item of property has been ascertained in the same way it was found in problems 1, 3, 4, 5 and 6. The first apportionment of insurance to companies gave the following results:

	Pork.	Flour.	Grain.
Company A insures...	$5,000.00		
Company B insures...	714.29	$4,285.71	
Company C insures...	1,000.00		$4,000.00
Company D insures...	454.55	2,727.27	1,818.18
Totals	$7,168.84	$7,012.98	$5,818.18

An examination will show that $7,168.84 is $805.20 more than $6,363.64, the actual insurance in all companies on pork. It will also show that $7,012.98 is $1,168.84 less than $8,181.82, the actual insurance in all companies on flour. The actual insurance in all companies on grain is $5,454.54, and as the first apportionment of insurance to companies on this item is $5,818.18 there is an excess of insurance of $363.65 here, which must be transferred to flour. The excess insurance of $805.20 on pork must be transferred to flour to make good the shortage of $1,168.84. These two items of over-insurance on pork and grain are transferred to flour, by applying the same rule used in problem No. 6, as fully explained under the heading "Re-Apportionment of Insurance to Companies."

Problem No. 8.

Company A covers on pork, flour and grain.....	$ 5,000
Company B covers on flour, grain and fruit.....	5,000
Company C covers on grain, fruit and pork.....	5,000
Company D covers on fruit, pork and flour.....	5,000
Total insurance	$20,000

Loss on pork.....	$10,000
Loss on flour.....	3,000
Loss on grain.....	4,000
Loss on fruit.....	1,000
Total loss.....	$18,000

This adjustment problem differs from the others, as each policy covers three different items of property and no two forms are alike.

Maximum Insurance.		Loss.	Max. over-Ins.	Actual over-Ins.	Ins.	Pays.
Pork:—						
Co. A	$ 5,000				$ 3,159.62	$ 3,086.14
Co. C	5,000				3,441.80	3,361.76
Co. D	5,000				3,636.67	3,552.10
	15,000	$10,000	$ 5,000	$ 238.09	$10,238.09	$10,000.00
Flour:—						
Co. A	$ 5,000				$ 797.47	$ 669.87
Co. B	5,000				1,829.27	1,536.59
Co. D	5,000				944.69	793.54
	$15,000	3,000	12,000	571.43	$ 3,571.43	$ 3,000.00
Grain:—						
Co. A	$ 5,000				$ 1,042.91	$ 922.15
Co. B	5,000				2,317.07	2,048.78
Co. C	5,000				1,163.83	1,029.07
	$15,000	4,000	11,000	523.81	$ 4,523.81	$ 4,000.00
Fruit:—						
Co. B	$ 5,000				$ 853.66	$ 512.20
Co. C	5,000				394.37	236.62
Co. D	5,000				418.64	251.18
	$15,000	1,000	14,000	666.67	$ 1,666.67	$ 1,000.00
Totals		$18,000	$42,000	$2,000.00	$20,000.00	$18,000.00

Company A insures on pork	$3,159.62	pays	$3,086.14
Company A insures on flour	797.47	pays	669.87
Company A insures on grain	1,042.91	pays	922.15
Totals	$5,000.00		$4,678.16
Company B insures on flour	$1,829.27	pays	$1,536.59
Company B insures on grain	2,317.07	pays	2,048.78
Company B insures on fruit	853.66	pays	512.20
Totals	$5,000.00		$4,678.16
Company C insures on pork	$3,441.80	pays	$3,361.76
Company C insures on grain	1,163.83	pays	1,029.07
Company C insures on fruit	394.37	pays	236.62
Totals	$5,000.00		$4,627.45
Company D insures on pork	$3,636.67	pays	$3,552.10
Company D insures on flour	944.69	pays	793.54
Company D insures on fruit	418.64	pays	251.18
Totals	$5,000.00		$4,596.82

This is a complicated adjustment problem, and I believe the application of any rule for the apportionment of compound insurance to it, will furnish a thorough and practical test of the rule.

The insurance on each of the four items of property is ascertained by applying the same rule that has been used in problems 1, 3, 4, 5, 6 and 7. The maximum insurance on each item of property is $15,000. After deducting the loss on each item, from the maximum insurance thereon, we have a maximum over-insurance on pork of $5,000, on flour of $12,000, on grain of $11,000 and on fruit of $14,000, which makes a total maximum over-insurance of $42,000. The actual insurance on the four items of property is $20,000 and the total loss thereon is $18,000, leaving the actual over-insurance $2,000. This actual over-insurance is apportioned to each of the four items of property, in the ratio that the maximum over-insurance thereon bears to the total maximum over-insurance. 5,000/42,000 of $2,000 to pork, 12,000/42,000 of $2,000 to flour, 11,000/42,000 of $2,000 to grain and 14,000/42,000 of $2,000 to fruit. The actual over-insurance apportioned to the four items of property is as follows:

Pork	$238.09
Flour	571.43
Grain	523.81
Fruit	666.67
Total	$2,000.00

The loss on each item of property added to the actual over-insurance thereon, gives the total insurance, which is as follows:

Insurance on pork.....	$10,238.00
Insurance on flour.....	3,671.43
Insurance on grain.....	4,523.81
Insurance on fruit.....	1,666.67
Total	$20,000.00

Apportionment of Insurance to Companies.

The following result is obtained by the first apportionment of insurance on each item of property to the companies:

Pork	$ 238.09
Flour	571.43
Grain	523.81
Fruit	666.67
Total	$2,000.00
Insurance on pork.....	$10,238.00
Insurance on flour.....	3,671.43
Insurance on grain.....	4,523.81
Insurance on fruit.....	1,666.67
Total	$20,000.00

	Pork.	Flour.	Grain.	Wheat.
Co. A insures...	$2,792.20	$ 974.03	$1,233.77	
Co. B insures...		1,829.27	2,317.07	$ 853.66
Co. C insures...	3,115.94		1,376.81	507.25
Co. D insures...	3,307.69	1,153.85		538.46
Totals	$9,215.83	$3,957.15	$4,927.65	$1,899.37

The actual insurance apportioned to pork is $10,238.09. We therefore have a shortage of $1,022.26. There is an over-insurance on flour of $385.72, on grain of $403.84 and on fruit of $232.70, which makes a total over-insurance on these three items of property of $1,022.26. This is the same amount that the insurance on pork is short.

Re-Apportionment of Insurance to Companies.

The over-insurance in companies covering flour, grain and fruit which also cover pork is apportioned to pork separately from each item in the ratio that the insurance in each company on each item or division, under the first apportionment of insurance to companies, bears to the total of said insurance thereon.

The insurance on flour, under the first apportionment of insurance to companies gives company A $974.03 and company D $1,153.85, making a total in

the two companies covering on flour of $2,127.88. We have $385.72 excess insurance on flour under the first apportionment of insurance to companies in companies A and D, which must be transferred to pork. 97,403/212,788 of $385.72 is $176.56 and this is added to the insurance in company A on pork. 115,385/212,788 of $385.72 is $209.16, which is transferred from the insurance in company D on flour under the first apportionment of insurance to pork. Company A now has $797.47 and company D $944.69 on flour. We take 123,377/261,058 of $403.84, the excess insurance under the first apportionment of insurance to companies in companies A and C on grain, which is $190.86 and add it to the insurance on pork. 137,681/261,058 of $403.84 is $121.98, which is the excess insurance on grain under the first apportionment of insurance to companies, in company C, transferred from grain to pork. We now have $1,042.91 insurance in company A and $1,163.83 insurance in company C covering on grain. The $232.70 excess insurance in companies C and D covering on fruit under the first apportionment of insurance to companies is transferred to pork; 50,725/104,571 of it, or $112.88 from company C and 53,846/104,571 of it, or $119.82 from company D. This leaves $394.37 in company C and $418.64 in company D covering on fruit. The total insurance on pork now in company A is $3,159.62, in company C $3,441.80 and in company D $3,636.67, making a total of $10,238.09.

The application of this rule as you read this, may appear to be very complicated, but it is not. If you keep your work in proper form on your working sheets, you will find it to be as simple as any problem of proportion.

This rule may be, and probably is, like Rice's Rule and all the other rules, more faulty than the Kennie Rule, but I have made many applications of it, and it has produced satisfactory results.

I favor the "Finn Rule"—later known as the "Griswold Rule," and now known as the "Kinne Rule." It makes the compound insurance specific on the basis of the loss. It provides for a re-apportionment if it is necessary and also a re-re-apportionment, if the assured has insurance equal to or greater than this loss, until his full loss is paid.

The "Kenne Rule" has its faults, but it is equitable and susceptible of general application, and protects the assured to the full extent of the policies.

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